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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209-AA04

Standards of Ethical Conduct for Employees of the Executive Branch; Correction

AGENCY: Office of Government Ethics.

ACTION: Final rule; correction.

SUMMARY: This document corrects five minor typographical errors in the regulatory text of the final rule on executive agency ethics training programs, which was published by the Office of Government Ethics on Friday, August 7, 1992 (57 FR 35006- 35067).

EFFECTIVE DATE: August 7, 1992.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, telephone/FTS (202) 523-5757, FAX (202) 523-6325.

Approved: October 20, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics is correcting the August 7, 1992 publication of the final rule on Standards of Ethical Conduct for Employees of the Executive Branch, which was the subject of FR Doc. 92-16070, as follows:

§ 2635.202 [Corrected]

1. On page 35045 of the regulatory text, in the first column, in paragraph (c)(4)(iii) of § 2635.202, in the last line of the paragraph, the final punctuation mark "." is corrected to read "; or".

§ 2635.204 [Corrected]

2. On page 35049 of the regulatory text, in the first column, in paragraph (i)(1) of § 2635.204, in the last line of the paragraph, the final punctuation mark "." is corrected to read ";".

§ 2635.801 [Corrected]

3. On page 35062 of the regulatory text, in the first column, in paragraph (d)(6) of § 2635.801, in the last line of the paragraph, correct the abbreviation *"seq"* by adding a "." at the end and before the final punctuation mark ";".

§ 2635.807 [Corrected]

4. On page 35063 of the regulatory text, in the second column, in the introductory text of paragraph (a) of § 2635.807, in the third line of the paragraph, the word "the" is corrected to read "this".

§ 2635.808 [Corrected]

5. On page 35066 of the regulatory text, in the second column, in paragraph (c)(1)(ii) of § 2635.808, in the last line of the paragraph, the final punctuation mark "." is corrected to read ";".

[FR Doc. 92-25875 Filed 10-26-92; 8:45 am]
BILLING CODE 6345-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV-92-002FR]

Avocados Grown in South Florida; Finalize Maturity Requirement Revisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate corrections, an interim final rule which revised maturity requirements in effect on a continuous basis for avocados grown in Florida. The interim final rule made calendar date adjustments in the shipping schedules for varieties of avocados to synchronize them with the 1992 and 1993 calendar years. The maturity requirements are designed to ensure that only mature fruit is shipped to the fresh market, thereby improving grower returns and promoting orderly marketing conditions.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-5331.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 915, both as amended [7 CFR part 915], regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of

business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area (South Florida). Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee), which administers the order locally, unanimously recommended maturity revisions. The committee meets prior to and during each season to review the handling requirements for avocados, effective on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

The interim final rule was issued on June 22, 1992, and published in the **Federal Register** [57 FR 28587, June 26, 1992], with an effective date of June 26, 1992, and a 30-day comment period ending July 27, 1992. No comments were received. However, the Department identified several typographical and printing errors in that interim final rule as published, which are being corrected in this final rule as follows: (1) For the Arue variety the minimum diameter of 3$^{3}/_{16}$ inches established for the shipping period ending the 4th Sunday of May is changed to the shipping period ending the 5th Monday of June; (2) for the Miguel(P) variety the minimum diameter of 3$^{1}/_{16}$ inches for the shipping period ending the 4th Monday of August is changed to 3$^{1}/_{16}$ inches; (3) for the Beta variety the minimum diameter of 3$^{3}/_{16}$ inches for the shipping period ending the 2nd Sunday of August is changed to 3$^{5}/_{16}$ inches, and the minimum diameter of 3$^{5}/_{16}$ inches for the shipping period ending the 5th Monday of August is changed to 3$^{5}/_{16}$ inches. These corrections reflect the original recommendations of the committee.

The interim final rule revised the maturity requirements specified in Table 1 of paragraph (a)(2) of § 915.322 [7 CFR part 915], by revising the calendar dates in the shipping schedules for different avocado varieties specified in that section to synchronize those dates with the 1992 and 1993 calendar years.

Maturity requirements for Florida avocados are in effect on a continuous basis. Such requirements specify minimum weights and diameters for specific shipping periods for some 60 varieties of avocados and color specifications for those varieties which turn red or purple when mature. The maturity requirements for the various varieties of avocados are different, because each variety has different characteristics.

These maturity requirements are designed to prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each variety. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers.

The Florida avocado shipping season usually begins about mid-May with light shipments of early varieties and it continues into the following March or April, with heaviest shipments occurring from July through December.

A minimum grade requirement of U.S. No. 2, currently in effect on a continuous basis for Florida avocados under § 915.306 [7 CFR part 915], remains in effect unchanged by this action.

Import requirements concerning minimum size (weight and diameter) and skin color maturity requirements specified in § 944.31 [7 CFR 944.31] for imported avocados were suspended May 13, 1991 [56 FR 23009, May 20, 1991]. Therefore this action will not impact imported avocados until the suspension is lifted.

Handlers may ship, exempt from the minimum grade, size, and maturity requirements effective under the marketing order, up to 55 pounds of avocados during any one day under a minimum quantity provision, and up to 20 pounds of avocados as gift packs in individually addressed containers. Also, avocados utilized in commercial processing are not subject to the grade, size, and maturity requirements under the order.

This action reflects the committee's and the Department's appraisal of the need to maintain the revised maturity requirements for Florida avocados. The Department's view is that this action will have a beneficial impact on producers and handlers since it will continue to help ensure that only mature avocados are shipped to fresh markets. The committee considers that maturity requirements for Florida grown avocados are necessary to improve grower returns and promote orderly marketing conditions. Although compliance with these maturity requirements will affect costs to handlers, these costs will be offset by the benefits of providing the trade and consumers with mature avocados.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** [57 FR 28587, June 26, 1992], with the corrections herein specified, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

Note: This section will appear in the annual Code of Federal Regulations.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 915.332, which was published in the **Federal Register** [57 FR 28587, June 26, 1992], is adopted as a final rule with the following changes. In § 915.332, Table I in paragraph (a)(2) is amended by revising the following entries to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(2) * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Arue	2nd Mon May	4th Sun May	16	
	4th Mon May	5th Mon June	14	3 1/16
* * * *	*	*	*	
Miguel (P)	2nd Mon July	4th Sun July	22	3 13/16
	4th Mon July	2nd Sun Aug	20	3 13/16
	2nd Mon Aug	4th Mon Aug	18	3 9/16
* * * *	*	*	*	
Beta	1st Mon Aug	2nd Sun Aug	18	3 9/16
	2nd Mon Aug	5th Mon Aug	16	3 9/16
* * * *	*	*	*	

* * * * *

Dated: October 20, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-25942 Filed 10-26-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AC38

Supplemental Security Income for the Aged, Blind, and Disabled; Parent-to-Child Deeming

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: Under the Supplemental Security Income (SSI) regulations, three formulas are used to calculate the amount of income deemed to a child from his or her ineligible parent(s) when they are living together. This final rule eliminates the formula used when the parent(s) has only earned income and the formula used when the parent(s) has only unearned income. Instead, this rule requires that only the method used in cases where the parent(s) has both earned and unearned income be used to calculate the amount of parental income to be deemed. Using a single method to calculate the parental income to be deemed will eliminate certain anomalies which sometimes occurred when the regulations required that more than one of the three computational methods be applied in the same case and when there was a change in the type of income received (e.g., an increase in unearned income), resulting in a change in computation but no correlating change in the deemed amount.

EFFECTIVE DATE: This final rule is effective November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 966-0512.

SUPPLEMENTARY INFORMATION: This rule was published as a Notice of Proposed Rulemaking in the **Federal Register** on July 8, 1991 (56 FR 30884). A 60-day comment period was provided. Comments received in response to the Notice of Proposed Rulemaking are discussed under the heading "Discussion of Comments".

Section 1614(f)(2) of the Social Security Act (the Act), as amended (42 U.S.C. 1382c(f)(2)) which states for purposes of determining eligibility for and the amount of benefits for any individual who is a child under age 18, such individual's income and resources shall be deemed to include any income and resources of a parent of such individual (or the spouse of such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.

This provision of the law is intended to recognize the obligation of a parent to support a minor child. The Secretary of Health and Human Services (the Secretary) has been given broad discretion under section 1614(f)(2) of the Act to set forth rules to determine what portion of a parent's income and resources may be deemed to a child applying for or eligible for benefits under the SSI program.

In implementing section 1614(f)(2), the Secretary has set forth the rules in 20 CFR 416.1165 for determining how we deem income to an eligible child from an ineligible parent(s). Under the regulation at § 416.1165(a), we first determine the amount of earned and unearned income of the ineligible parent(s). Next, according to the rules in § 416.1165(b), we deduct an allocation for each ineligible child in the household. We also deduct an allocation for eligible aliens who have been sponsored by and have income deemed from the ineligible parent(s) (§ 416.1165(c)). Such allocations are deducted first from the unearned income of the parent(s) and then, if any allocation remains, from the earned income of the parent(s). Finally, we determine the amount to be deducted for the ineligible parent(s) using one of the formulas in § 416.1165(d). The formula in § 416.1165(d)(1) is applicable where all parental income is earned. The formula in § 416.1165(d)(2) is applicable where all parental income is unearned. The formula in § 416.1165(d)(3) applies where the parental income is both earned and unearned. We use the formula which reflects the type of income which the parent(s) has after exclusions under section 416.1161(a) have been applied and allocations have been deducted for any ineligible children in the household and/or any eligible aliens sponsored by the parent(s).

The use of these three formulas has resulted in the following anomalies:

Anomaly 1: We sometimes deem less income to the child in situations where parental unearned income has increased or has just begun to be received while earned income has not changed or has increased.

Two factors are involved. First, in the earned income only computation (§ 416.1165(d)(1)), after deducting $85 (the standard general and earned income exclusions) plus twice the applicable Federal benefit rate (FBR), we count 100 percent of the remaining earned income when computing a child's deemed income. However, in the earned and unearned income computation (§ 416.1165(d)(3)), after deducting any of the $20 general income exclusion not

applied to unearned income, the $65 earned income exclusion, and the applicable FBR, we count only 50 percent of the remaining earned income in computing deemed income. Second, the amount of unearned income also affects whether the anomaly will occur.

Anomaly 2: In some situations, with no change in parental income, we deem more income when an ineligible child is born, or when another ineligible child qualifies for an allocation. This occurs when application of the additional ineligible child allocation eliminates unearned income in the deeming computation and the earned income only computation begins to be used.

The following examples illustrate the anomalies that occur. All computations in the examples are based on the Federal benefit rate effective January 1, 1992.

Anomaly 1.—Current Rules

Family A (Mother, Father, and Eligible Child):	
Earned Income	$1,500
Earned Income	1,500
General and Earned Income Exclusions	−85
Remainder	1,415
Parental Allocation (2 × the Couple FBR)	−1,266
Deemed Income	149
Total Parental Income	1,500
Deemed Income	149
Family B (Mother, Father, and Eligible Child):	
Earned Income	1,500
Unearned Income	5
Unearned Income	5
General Income Exclusion	−20
Remaining General Income Exclusion	15
Earned Income	1,500
Remaining General Income Exclusion ($15) plus Earned Income Exclusion ($65)	−80
Remainder	1,420
½ Remainder	−710
Remainder	710
Parental Allocation (1 × the Couple FBR)	−633
Deemed Income	77
Total Parental Income	1,505
Deemed Income	77
Family A Deemed Income	149
Family B Deemed Income	−77
Difference in Deemed Income	72

Anomaly 2.—Current Rules

Family A (Mother, Father, Eligible Child):	
Earned Income	$1,775
Unearned Income	208
Unearned Income	208
General Income Exclusion	−20
Remaining Unearned Income	188
Earned Income	1,775
Earned Income Exclusion	−65
Remaining Earned Income	1,710
½ Remaining Earned Income	−855
Remaining Earned Income	855
Remaining Unearned Income	+188
Total Countable Income	1,043
Parental Allocation (1 × Couple FBR)	−633
Deemed Income	410
Total Parental Income	1,983
Deemed Income	410
Family B (Mother, Father, Eligible Child, Ineligible Child):	
Earned Income	1,775
Unearned Income	208
Unearned Income	208
Ineligible Child Allocation	−211
Remaining Unearned Income	0.00
Remaining Ineligible Child Allocation	3
Earned Income	1,775
Remaining Ineligible Child Allocation	−3
Remainder	1,772
General Plus Earned Income Exclusions	−85
Remaining Earned Income	1,687
Parental Allocation (2 × Couple FBR)	−1,266
Deemed Income	421
Total Parental Income	1,983
Deemed Income	421
Family B Deemed Income	421
Family A Deemed Income	−410
Difference In Deemed Income	11

This final rule eliminates the anomalies by eliminating two of the three formulas now being used to determine the amount of deemed parental income; i.e., the formula applicable to a parent having only earned income (§ 416.1165(d)(1)) and the formula applicable to a parent having only unearned income (§ 416.1165(d)(2)). The remaining formula, heretofore applicable only to a parent having both earned and unearned income (§ 416.1165(d)(3)), is now applicable irrespective of the type of parental income. This particular solution to the problem of anomalies has been chosen because it eliminates the anomalies discussed, parallels the way we currently treat the combination of earned and unearned income, promotes the goal of program simplification, and does not disadvantage any individuals already on the rolls.

The following illustrations demonstrate how the anomalies shown above are eliminated by use of the single parent-to-child deeming formula.

Anomaly 1.—Eliminated Under New Final Rule

Family A (Mother, Father, Eligible Child):	
Earned Income	$1,500.00
Earned Income	1,500.00
General and Earned Income Exclusions	−85.00
Remainder	1,415.00
½ Remainder	−707.50
Remainder	707.50
Parental Allocation (1 × the Couple FBR)	−633.00
Deemed Income	74.50
Total Parental Income	1,500.00
Deemed Income	74.50
Family B (Mother, Father, Eligible Child):	
Earned Income	1,500.00
Unearned Income	5.00
Unearned Income	5.00
General Income Exclusion	−20.00
Exclusion	15.00
Earned Income	1,500.00
Remaining General Exclusion ($15) plus Earned Income Exclusion	−80.00
Remainder	1,420.00
½ Remainder	−710.00
Remainder	710.00
Parental Allocation (1 × the Couples FBR)	−633.00
Deemed Income	77.00
Total Parental Income	1,505.00
Deemed Income	77.00
Family B Deemed Income	77.00
Family A Deemed Income	−74.50
Difference in Deemed Income is Direct Result of Difference in Income	2.50

Anomaly 2.—Eliminated Under New Final Rule

Family A (Mother, Father, Eligible Child):	
Earned Income	$1,775
Unearned Income	208
Unearned Income	208
General Income Exclusion	−20
Remaining Unearned Income	188
Earned Income	1,775
Earned Income Exclusion	−65
Remaining Earned Income	1,710
½ Remaining Earned Income	−855
Remaining Earned Income	855
Remaining Unearned Income	+188
Total Countable Income	1,043
Parental Allocation (1 × Couple FBR)	−633
Deemed Income	410
Total Parental Income	1,983
Deemed Income	410
Family B (Mother, Father, Eligible Child, Ineligible Child):	
Earned Income	1,775

Anomaly 2.—Eliminated Under New Final Rule—Continued

Unearned Income	208
Unearned Income	208
Ineligible Child Allocation	−211
Remaining Unearned Income	0.00
Remaining Ineligible Child Allocation	3
Earned Income	1,775
Remaining Ineligible Child Allocation	−3
Remainder	1,772
General Plus Earned Income Exclusions	−85
Remaining Earned Income	1,687
½ Remaining Earned Income	−843.50
Remaining Earned Income	843.50
Total Countable Income	843.50
Parental Allocation (1 × Couple FBR)	−633
Deemed Income	210.50
Total parental Income	1,983
Deemed Income	210.50
Family A Deemed Income	410
Family B Deemed Income	−210.50
Difference in deemed income is direct result of difference in family composition	199.50

Discussion of Comments

Comments were received from 17 sources in response to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on July 8, 1991 (56 FR 30884). The commenters included a State department of public health, advocacy groups for the mentally retarded, legal aid organizations, and a private individual. All of the commenters were supportive of the proposed rule. The comments all dealt with the examples used to illustrate the anomalies and how the anomalies would be eliminated. A summary of the comments submitted and our responses follow.

Comment: One commenter indicated that the Federal Benefit Rate (FBR) used in the anomalies is incorrect.

Response: We understand that the FBR used in the examples in the NPRM was not the current amount. It was the FBR that was in force at the time the examples were prepared for publication. We have updated the figures used in the computation to reflect the current FBR which was effective January 1, 1992.

Comment: Five commenters noted that the example describing Anomaly 2 (B) was incorrect.

Response: The commenters are correct that the example incorrectly omitted a step. The remainder of the child's allocation after it was applied to the parents' unearned income was not deducted from the parents' earned income. We have corrected this error in the final regulation.

Comment: One commenter pointed out that there was an error in Example 1 of the proposed revision of 20 CFR 416.1165(h). The commenter indicated that the $20 general income exclusion is not deducted from the parents' income resulting in a deemed amount $20 higher than is correct according to the narrative in paragraph (d).

Response: Example 1 in paragraph (h) was incorrect. However, it was not incorrect because of the omission of one of the steps in the computation. The error is in the step which combines remaining unearned income with remaining earned income; we made a math error. We have amended all of the examples to use the latest Federal benefit rate. In doing this we also corrected the error this commenter pointed out.

Comment: Two commenters indicated that the proposed rule was not clear with respect to application of the unused portion of the ineligible child's allocation after its deduction from the parents' unearned income. The commenters felt that we should clarify that such portion is to be deducted from the parents' earned income.

Response: With regard to clarifying this aspect of the regulation, we think that the existing regulations are sufficient to address the issue. The current 20 CFR 416.1165(b) states that we deduct an allocation for each ineligible child in the household and refers the reader to 20 CFR 416.1163(b) for further instructions. 20 CFR 416.1163(b)(3) instructs the user to apply the ineligible child's allocation first to unearned income and, if the unearned income is less than the allocation, deduct the remainder of the allocation from earned income. While this section of the regulations applies to deeming between spouse, the reference from 20 CFR 416.1165(b) is sufficient to establish that the instructions apply equally in parent-to-child deeming cases.

Comment: One commenter advised that Example 3 in the proposed 20 CFR 416.1165(h) defines a situation that would occur very infrequently. The example describes a single parent who has two children with disabilities and is sponsoring an eligible alien. Another commenter concurred that there should be an example which more clearly shows the application of the ineligible child's allocation.

Response: Example 3 in the proposed 20 CFR 416.1165 describes a situation which is, admittedly, uncommon. It is, however, possible and, since the purpose of the examples is to describe a broad range of possibilities, we think the example should remain. The example was incorrect, however, in the order in which the exclusions against the ineligible parent's income were applied. We have corrected this error. The commenter's point regarding better depiction of the use of the ineligible child's allocation is well taken and we have added an example (Example 4) in the final regulation which should clarify the issue.

Comment: A commenter suggested that we increase the $65 earned income exclusion to account for inflation adding that the exclusion should be 50 percent of the FBR.

Response: The $65 earned income exclusion is used in the deeming computation to provide similar exclusions for similar types of income. However, that earned income exclusion is fixed by statute and can only be changed by congressional action.

Comment: A commenter suggested that the allocation for ineligible children be deducted from the parents' earned or unearned income after (rather than before) any allocations/deductions for the parents have been made. The commenter believes this change will serve as a work incentive for the parent(s).

Response: This regulation was promulgated specifically to address the anomalies that have existed in our rules. The suggestion to deduct the ineligible child's allocation after calculating the parent(s) allocation addresses a different issue which exceeds the scope of our intent in revising this regulation. The commenter's point is well taken, though, and we will study this idea in the context of work incentives.

Accordingly, with the aforementioned revisions, the regulation is adopted. Since deeming determinations are made as of the first day of the month, this final regulation will be effective on the first day of the month following this publication.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354,

the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

This regulation imposes no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program.

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and Recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 22, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: September 1, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 416 of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart K of part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. In § 416.1165, the section heading and paragraphs (d) and (h) are revised to read as follows:

§ 416.1165 How we deem income to you from your ineligible parent(s).

* * * * *

(d) *Allocations for your ineligible parent(s).* We next deduct allocations for your parent(s). We do not deduct an allocation for a parent who is receiving public income-maintenance payments (see § 416.1142(a)). The allocations are calculated as follows:

(1) We first deduct $20 from the parents' combined unearned income, if any. If they have less than $20 in unearned income, we subtract the balance of the $20 from their combined earned income.

(2) Next, we subtract $65 plus one-half the remainder of their earned income.

(3) We total the remaining earned and unearned income and subtract—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

* * * * *

(h) *Examples.* These examples show how we deem an ineligible parent's income to an eligible child when none of the exceptions in § 416.1160(b)(2) applies. The Federal benefit rates are those effective January 1, 1992.

Example 1. Henry, a disabled child, lives with his mother and father and a 12-year-old ineligible brother. His mother receives a pension (unearned income) of $365 per month and his father earns $1,165 per month. Henry and his brother have no income. First we deduct an allocation of $211 for Henry's brother from the unearned income. This leaves $154 in unearned income. We reduce the remaining unearned income further by the $20 general income exclusion, leaving $134. We then reduce the earned income of $1,165 by $65 leaving $1,100. Then we subtract one-half of the remainder, leaving $550. To this we add the remaining unearned income of $134 resulting in $684. From this, we subtract the parent allocation of $633 (the Federal benefit rate for a couple) leaving $51 to be deemed as Henry's unearned income. Henry has no other income. We apply Henry's $20 general income exclusion which reduces his countable income to $31. Since that amount is less than the $422 Federal benefit rate for an individual, Henry is eligible. We determine his benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See § 416.420.

Example 2. James and Tony are disabled children who live with their mother. The children have no income but their mother receives $542 a month in unearned income. We reduce the unearned income by the $20 general income exclusion, leaving $522. We then subtract the amount we allocate for the mother's needs, $422 (the Federal benefit rate for an individual). The amount remaining to be deemed to James and Tony is $100, which we divide equally between them resulting in $50 deemed unearned income to each child. We then apply the $20 general income exclusion, leaving each child with $30 countable income. The $30 of unearned income is less than the $422 Federal benefit rate for an individual, so the children are eligible. We then determine each child's benefit by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See § 416.420.

Example 3. Mrs. Jones is the ineligible mother of two disabled children, Beth and Linda, and has sponsored an eligible alien, Mr. Sean. Beth, Linda, and Mr. Sean have no income; Mrs. Jones has unearned income of $924 per month. We reduce the mother's unearned income by the $211 allocation for Mr. Sean, leaving $713. We further reduce her income by the $20 general income exclusion, which leaves a balance of $693. Next, we subtract the amount we allocate for the mother's needs, $422 (the amount of the Federal benefit rate for an individual). The balance of $271 to be deemed is divided equally between Beth and Linda. Each now has unearned income of $135.50 from which we deduct the $20 general income exclusion, leaving each child with $115.50 countable income. Since this is less than the $422 Federal benefit rate for an individual, the girls are eligible. We then determine each child's benefit by subtracting her countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See § 416.420. (For the way we deem the mother's income to Mr. Sean, see examples No. 3 and No. 4 in § 416.1166a.)

Example 4. Jack, a disabled child, lives with his mother, father, and two brothers, none of whom are eligible for SSI. Jack's mother receives a private pension of $350 per month and his father works and earns $1,525 per month. We allocate a total of $422 for Jack's ineligible brothers and subtract this from the parents' total unearned income of $350; the parents' unearned income is completely offset by the allocations for the ineligible children with an excess allocation of $72 remaining. We subtract the excess of $72 from the parents' total earned income leaving $1,453. We next subtract the combined general income and earned income exclusions of $85 leaving a remainder of $1,368. We subtract one-half the remainder, leaving $684 from which we subtract the parents' allocation of $633. This results in $51 deemed to Jack. Jack has no other income, so we subtract the general income exclusion of $20 from the deemed income leaving $31 as Jack's countable income. Since this is below the $422 Federal benefit rate for an individual, Jack is eligible. We determine his payment amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See § 416.420.

[FR Doc. 92–25945 Filed 10–26–92; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8433]

RIN 1545–AJ51

Discounted Unpaid Losses; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8433), which was published in the **Federal Register** for Tuesday, September 8, 1992 (57 FR 40841). The final regulations relate to the discounting of unpaid losses of insurance companies for federal income tax purposes.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky, (202–622–3970, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of these corrections set forth final income tax regulations relating to the discounting of unpaid losses under section 846 of the Internal Revenue Code of 1986 (the Code). Section 846 was added to the Code by section 1023(c) of the Tax Reform Act of 1986 (100 Stat. 2399).

Need for Correction

As published, T.D. 8433 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8433), which was subject to FR Doc. 92–21299, is corrected as follows:

§ 1.846–0 [Corrected]

1. On page 40844, column 1, in § 1.846–0 in the entry for § 1.846–2, line 2, the language "own historical loss payment patterns." is corrected to read "own historical loss payment pattern.".

§ 1.846–3 [Corrected]

2. On page 40847, column 1, § 1.846–3(f), paragraph (ii) of Example 5, line 4, the language "230,000–$130,000)]. Under paragraph" is corrected to read "$230,000–$130,000)]. Under paragraph".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–25933 Filed 10–26–92; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–4527–1]

1992 Update for Partial Delegation of Authority to Bernalillo County (New Mexico) for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The Environmental Protection Agency (EPA) announces the delegation of authority to the Albuquerque-Bernalillo County Air Quality Control Board ("the Board") and the Albuquerque Environmental Health Department (AEHD) to implement and enforce the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) in Bernalillo County (New Mexico), including the City of Albuquerque. The provisions of full authority apply to all of the NSPS and NESHAP promulgated by the EPA through August 20, 1991, for NSPS and September 19, 1991, for NESHAP, and partial authority covers all new and amended standards promulgated after those dates. However, the delegation of authority, under this notice, does not apply to the sources located in Indian lands within the boundaries of Bernalillo County as specified in the delegation agreement and in this notice. Also, this delegation of authority is not applicable to the NESHAP radionuclide standards specified under 40 CFR part 61.

EFFECTIVE DATE: August 19, 1992.

ADDRESSES: The AEHD's request and delegation agreement may be obtained by writing to one of the following addresses:

Chief, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, suite 700, Dallas, Texas 75202, Telephone: (214) 655–7214;

Director, Air Pollution Control Division, Albuquerque Environmental Health Department, The City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Boyce, Planning Section, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202, Telephone number (214) 655–7259.

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(l)(1) of the Clean Air Act allow the Administrator of the EPA to delegate EPA's authority to any State or local agency which can submit adequate regulatory procedures for implementation and enforcement of the NSPS and NESHAP programs.

The New Mexico Air Quality Control Act (NMAQCA) allows, by ordinance, "A" class counties and any municipality within an "A" class county to create a municipal, county or joint air quality board to administer and enforce the provisions of the NMAQCA. The City of Albuquerque and Bernalillo County have jointly established the "Albuquerque-Bernalillo County Air Quality Control Board" (herein called "the Board") for administration and enforcement of NMAQCA because Bernalillo County is an "A" class county. Under the NMAQCA, the AEHD is the administrative and enforcement agency of the Board. The AEHD has established a program for the local administration and enforcement of the NMAQCA in Bernalillo County, in lieu of the New Mexico Environmental Improvement Division (the State agency). Authority for the NSPS and NESHAP programs were delegated to the State of New Mexico (except for sources located in Bernalillo County and Indian lands) on March 15, 1985.

On February 25, 1992, the AEHD requested EPA to update the delegation of authority to the AEHD for the NSPS and the NESHAP programs through August 20, 1991, for NSPS and September 19, 1991, for NESHAP. The AEHD also requested partial delegation of authority for the technical and administrative review of new or amended NSPS and NESHAP promulgated by the EPA after August 20, 1991, for NSPS and September 19, 1991, for NESHAP. The AEHD's request included (1) Air Quality Control Regulations 30 (NSPS) and 31 (NESHAP), (2) legal authority provided in Joint Air Quality Control Board Ordinances Article XVI and No. 88–45, and (3) the commitments for implementation and enforcement of the programs as documented in the AEHD Director's letter dated February 25, 1992. AQCRs 30 and 31 incorporate the Federal NSPS and NESHAP by reference through August 20, 1991, for NSPS and September 19, 1991, for NESHAP.

The EPA reviewed the AEHD Director's request, Air Quality Control Regulations 30 and 31 and all other information submitted by the AEHD, including its request for implementation of the partial delegation of these programs. The EPA has determined that the Board and the AEHD have adequate authority and effective procedures for implementing and enforcing the NSPS and NESHAP programs in Bernalillo County. Therefore, EPA is delegating full authority to the Board and the AEHD through August 20, 1991, for NSPS and September 19, 1991, for NESHAP, and partial authority for the technical and administrative review of new or amended NSPS and NESHAP promulgated by the EPA after August 20, 1991, for NSPS and September 19, 1991, for NESHAP, subject to conditions and limitations of the delegation agreement dated August 19, 1992. No authority was delegated to the Board or AEHD for the radionuclide standards under 40 CFR

part 61 and sources located on Indian lands within the boundaries of Bernalillo County.

Today's notice informs the public that the EPA has delegated full authority to the AEHD for implementation and enforcement of the NSPS and NESHAP promulgated by the EPA through August 20, 1991, for NSPS and September 19, 1991, for NESHAP, and partial authority is delegated for the new and amended standards after that date. All of the required information, pursuant to the Federal NSPS and NESHAP (40 CFR part 60 and 40 CFR part 61) by sources located within the boundaries of Bernalillo County and in areas outside of Indian lands, should be submitted directly to the Albuquerque Environmental Health Department, the City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103. Sources located on Indian lands in the State of New Mexico, including Bernalillo County, should apply to the EPA Region 6 office at the address given in this notice. The sources located in the State of New Mexico, other than those areas specified above, should submit all of the required information to Chief, Air Quality Bureau, New Mexico Environmental Improvement Division, 1190 St. Francis Drive, Santa Fe, New Mexico 87503. All of the inquiries and requests concerning implementation and enforcement of the radionuclide standards under 40 CFR part 61, in the State of New Mexico, should be directed to the EPA Region 6 Office.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

This delegation is issued under the authority of section 111(c) and 112(l)(1) of the Clean Air Act, as amended (42 U.S.C. 7411(C) and 7412(D)).

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Fossil-Fuel steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper industry, Petroleum Phosphate, Fertilizer, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl Chloride.

Dated: August 19, 1992.

Joe D. Winkle,

Regional Administrator (6A).

[FR Doc. 92-26022 Filed 10-26-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 685

[Docket No. 920776-2256]

RIN 0648-AE36

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this final rule to implement Amendment 6 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The actions in this rule are intended to make the FMP and its implementing regulations consistent with amendments to the Magnuson Fishery Conservation and Management Act (Magnuson Act). The 1990 amendments to the Magnuson Act established exclusive U.S. jurisdiction over fisheries for tuna within the exclusive economic zone (EEZ). Amendment 6 provides that tunas and related species will be included in the fishery management unit for the FMP. Under Amendment 6, waters in the EEZ that are now closed to domestic longline vessels to prevent gear conflicts and incidental take of protected species also will be closed to operators of foreign vessels fishing for pelagic species. The amendment also applies some of the general foreign fishing regulations, which now apply to foreign longline vessels, to foreign baitboat and purse seine vessels. Foreign vessel reporting requirements and collection and reporting of data requirements that now apply to foreign longline vessels will also apply to foreign baitboat and purse seine vessels when approval from the Office of Management and Budget is received.

DATES: This action becomes effective at 0000 hours local time November 27, 1992.

The provisions of existing §§ 611.81(g) and 611.81(h), which are associated with collection-of-information requirements subject to the Paperwork Reduction Act, are not yet applicable to foreign baitboat and purse seine vessels. When approval from the Office of Management and Budget is obtained, the provisions of §§ 611.81(g) and 611.81(h) will be applied to foreign baitboat and purse seine vessels and the public will be notified through publication in the **Federal Register.**

ADDRESSES: Copies of Amendment 6, which incorporates an environmental assessment and regulatory impact review, may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Western Pacific Fishery Management Council, at (808) 523-1368; Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, at (310) 980-4034; or Alvin Z. Katekaru, Pacific Area Office, Southwest Region, NMFS, at (808) 955-8831.

SUPPLEMENTARY INFORMATION: The Western Pacific Fishery Management Council (Council) functions under authority of the Magnuson Act. Until recently, section 102 of the Magnuson Act excluded tuna from the exclusive management authority of the United States. The 1990 amendments to the Magnuson Act provided for the inclusion of tunas, beginning January 1, 1992. In the Pacific, tuna fisheries are to be managed under fishery management plans of the Regional Fishery Management Councils. The Council prepared the FMP for fisheries that take pelagic species other than tunas (i.e., swordfish, marlins, other billfishes, mahimahi, wahoo, and oceanic sharks) in 1986, and regulations were implemented in 1987 (52 FR 5987, February 27, 1987). This amendment will bring the FMP into conformance with the Magnuson Act. The proposed rule to implement this amendment was published at 57 FR 32952 (July 24, 1992).

As indicated in the proposed rule, Amendment 6 redefines the Pacific pelagic species management unit by listing genera of tunas, billfishes and associated species, and families of oceanic sharks, in the management unit, rather than listing each individual species. The tunas and related species to be added to the FMP management unit include the genera that contain these species: *Allothunnus fallai, Auxis rochei, A. thazard, Euthynnus affinis, E. lineatus, Gymnosarda unicolor, Katsuwonus pelamis, Scomber japonicus, Thunnus albacares, T. alalunga, T. obesus,* and *T. thynnus.* Each genus contains species that are caught by operators of vessels that fish in or otherwise use waters within the

Council's area of authority. Similarly, mahimahi, marlin, and spearfish, which were part of the original management unit, are now listed by genus name only, rather than by genus and species. The use of genus names will obviate the need for changes in the FMP management unit if changes occur in the mix of species taken in the areas covered by the FMP, or as taxonomic changes arise. Those genera that include only a single species are identified by both genus and species.

Amendment 6 defines overfishing for tuna stocks in the same manner as overfishing was defined for non-tuna stocks through Amendment 1 to the FMP. A stock is determined to be overfished if its spawning potential ratio (SPR) is less than 0.20. The Southwest Science Director, NMFS, has certified that this definition meets the requirements of the Secretary of Commerce's guidelines for conformance with the national standards of the Magnuson Act.

The FMP requires operators of foreign longline vessels to obtain permits before they can fish in the EEZ and to submit vessel activity reports, maintain timely and accurate records, and have a U.S. observer on board when fishing in the EEZ. The FMP also prohibits operators of foreign longline vessels from fishing within 12 nautical miles (nm) of Guam and the Hawaiian Islands, and larger areas may be closed under specific circumstances. This final rule applies these same requirements to operators of foreign pole-and-line (baitboat) and purse seine vessels.

Operators of U.S. longline vessels currently are prohibited from fishing in certain areas of the EEZ around Guam and Hawaii to prevent conflicts between operators of longline vessels and troll and handline vessels. Waters around the NWHI also are closed to U.S. longline vessels to prevent the incidental take of protected species (e.g., Hawaiian monk seals). To ensure that these objectives are achieved under this rule, the areas closed to U.S. longline fishing vessels are closed to foreign fishing vessels as well. This closure also may reduce the possibility of localized overfishing and the potential loss of harvesting ability for domestic recreational and commercial fisheries. However, no permits will be issued for foreign longline vessels to fish in the EEZ around Hawaii until at least April 1994 (see below).

Operators of U.S. longliners currently are required to notify NMFS when transiting the NWHI protected species zone. While the Council proposed that this requirement be imposed on all foreign longline vessel operators, and the proposed rule reflected this proposal, such a requirement has been found by the Department of State to be inconsistent with customary international law because it infringes upon freedom of navigation. The measure has been disapproved by the Secretary. Therefore, the final rule does not require operators of foreign longline vessels to notify NMFS when they intend to transit the NWHI protected species zone.

The FMP contains a moratorium, until April 1994, on the issuance of new permits for U.S. longliners authorized to fish around Hawaii. Under the Magnuson Act, U.S. interests are given priority over foreign interests, and it would be inconsistent to issue permits allowing foreign longline vessels to fish in the EEZ when new domestic fishing effort is being prevented. Therefore, this final rule prohibits foreign longline fishing in the EEZ around Hawaii while the moratorium is in effect.

The final rule prohibits operators of foreign longliners in the "non-retention zone" around the main Hawaiian Islands from (1) retaining billfish, oceanic sharks, wahoo, or mahimahi; and (2) removing billfish or oceanic sharks from the water. The non-retention zone extends seaward to 100 nm from the islands, but because the shoreward boundaries of the zone are contiguous with the closed areas, the zone is narrowed to the extent that the closed areas are expanded. The non-retention zone around Guam, which extends to 50 nm from the island, is removed because it is subsumed by the expansion of the closed area. The regulations governing fishing in the non-retention zone will not restrict longlining for the newly included genera of tuna and related species. The final rule does not subject foreign purse seiners and baitboats to the existing non-retention zone for foreign longliners because the incidental catch of non-tuna species by these gear types is small.

No new management measures are imposed on operators of U.S. longliners or other domestic gears (e.g., purse seine, baitboat, troll, handline), so there would be no impacts on U.S. fishermen.

The FMP specifies domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) for pelagic non-tuna species in non-numeric terms. Under this final rule, DAH and TALFF for tuna and related species will be specified in the same non-numeric manner.

In summary, under Amendment 6, tunas and related species are included in the FMP, providing clear authority for the Council and NMFS to manage all pelagic fishing activities in the region. The definition of overfishing for tunas will guide the selection of conservation and management measures to promote the long-term viability of the management unit stocks. Because of the large (perhaps Pacific-wide) population boundaries of most of the Pacific pelagic management unit species (including the main tuna species), preventing the overfishing of entire stocks, including those within the EEZ, may require regional or international management. There is little information on the status of minor species, but including them in the management unit allows the Council and NMFS to collect data and analyze the impacts of fishing on their populations.

Comments and Responses

Four sets of comments were received on the proposed rule; two favored approval of the amendment, one offered no specific comments, and one objected only to the specific measure requiring foreign longline vessel operators to notify NMFS prior to transiting the protected species zone in the NWHI. That measure has been disapproved, as noted above.

Changes From the Proposed Rule

Several technical changes have been made in the final rule. The Office of Fisheries Conservation and Management, NMFS, moved after issuance of the FMP regulations; this final rule reflects the change of address. Furthermore, § 611.81(a) has been revised to indicate that the 50 CFR part 685 regulations govern fishing only in the EEZ off Hawaii, the Northern Mariana Islands, and Pacific Ocean territories and possessions.

Classification

The Regional Director determined that Amendment 6 and its implementing rule are necessary for the conservation and management of the pelagic fisheries of the western Pacific region and are consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for the amendment and incorporated it into the amendment document. Based on the EA, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that there will not be a significant impact on the environment as a result of this rule. A copy of the EA is available from the Council (see **ADDRESSES**).

The Assistant Administrator has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The Council

incorporated a regulatory impact review in Amendment 6, which may be obtained from the Council (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request for approval of this collection-of-information has been submitted to the Office of Management and Budget (OMB). Operators of foreign fishing vessels would be required to record and submit data on their catch and effort in the EEZ. This total burden is expected to be light because few, if any, vessels are expected to fish in the EEZ. The estimated burden per vessel is 5 minutes per day for the operator to copy this information onto the U.S. log. This collection is a modification of a collection previously approved by OMB (OMB No. 0648–0075).

This collection will become effective upon approval from OMB and publication of a notice to that effect in the **Federal Register**. Comments on the collection of information and/or suggestions on how to reduce the burden can be sent to the Regional Director, Southwest Region, NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attn. NOAA Desk Officer].

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of American Samoa, Guam, and Hawaii. This determination was submitted for review by the responsible island government agencies under section 307 of the Coastal Zone Management Act. The respective island government agencies with coastal zone management responsibilities for review have concurred with this determination.

The Council assessed the potential impacts of the rule on endangered and threatened species and their habitat and concluded that the rule is not likely to adversely affect any endangered or threatened species, nor will it adversely affect any critical habitat of any listed species. On May 22, 1992, NMFS concurred with this conclusion and determined that no further consultations are necessary.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 685.

American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 20, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, chapter VI of title 50 of the Code of Federal Regulations is amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. In § 611.2, the definition of "highly migratory species" is removed and the definition of "fish (when used as a noun)" is revised to read as follows:

§ 611.2 Definitions.

* * * * *

Fish (when used as a noun) means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

* * * * *

Appendix A to Subpart A—[Amended]

3. In Table 1 to appendix A of subpart A of part 611, the entry in the first column for "Director, Southwest Region, National Marine Fisheries Service" is revised to read "Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; Telephone (310) 980–4001".

3a. In Table 2 to appendix A of subpart A of part 611, the entry in the second column for "Pacific Billfish, Oceanic Sharks, Wahoo, and Mahimahi Fishery" is revised to read "Pacific Pelagic Species Fishery".

3b. In Table 4 to appendix A of subpart A of part 611, the entry in the first column for "Pacific Billfish, Oceanic Sharks, Wahoo, and Mahimahi Fishery" is revised to read "Pacific Pelagic Species Fishery".

4. In the table to appendix D to subpart A of part 611, the following species codes and associated genera are added in numerical order to section B. of the table to read as follows:

Appendix D to Subpart A—Species Codes

Code	Common name [1]	Scientific name
	B. Pacific Ocean Fishes	
	Finfish	
257	Chub (Pacific) mackerel.	*Scomber japonicus.*
272	Albacore	*Thunnus alalunga.*
278	Bigeye tuna	*Thunnus obesus.*
280	Bluefin tuna	*Thunnus thynnus.*
282	Skipjack tuna	*Katsuwonus pelamis.*
284	Yellowfin tuna	*Thunnus albacares.*
289	Other tunas and related species.	*Allothunnus fallai, Auxis rochei, Auxis thazard, Euthynnus affinis, Euthynnus lineatus, Gymnosarda unicolor.*

[1] (NS) means non-specific as to species. This code must be used for all species of this species group unless a more specific code exists.

5. In § 611.20, the third sentence of paragraph (c) is revised to read as follows:

§ 611.20 Total allowable level of foreign fishing (TALFF).

* * * * *

(c) * * * For current apportionments, contact the appropriate Regional Director or the Office of Fisheries Conservation and Management, F/CM, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

6. In § 611.81, the section heading, paragraphs (a), (b), (c), (j)(2) including Table 1, (j)(3), and (j)(4) text preceding Table 2 are revised; paragraph (h)(4) is removed; and new paragraph (j)(9) is added to read as follows:

§ 611.81 Pacific pelagic species fishery.

(a) *Purpose and scope.* This section regulates all foreign fishing for Pacific pelagic management unit species conducted under a GIFA within the EEZ in the Pacific Ocean except that part of the EEZ in the Pacific Ocean except that part of the EEZ off Alaska. Regulations governing domestic vessels fishing for Pacific pelagic management unit species in the EEZ in the Pacific Ocean except that part of the EEZ off Alaska, California, Oregon, and Washington appear in part 685 of this chapter.

(b) *Definitions.* For the purposes of this section, these terms have the following meanings:

Billfish means swordfish (*Xiphias gladius*), blue marlin (*Makaira mazara*),

black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiophorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*).

Closed area means that area of the EEZ in which the operator of an FFV fishing for Pacific pelagic management unit species is prohibited from fishing.

Drift gill net means a floating rectangular net with one or more layers of mesh that is set vertically in the water.

Longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Mahimahi means "dolphin fishes" (*Coryphaena hippurus* and *Coryphaena equisetis*).

Non-retention zone means that area of the EEZ in which all billfish, oceanic sharks, wahoo, and mahimahi caught by longline gear from an FFV must be returned to the sea in accordance with the requirements of paragraph (j)(4) of this section.

Northwestern Hawaiian Islands (NWHI) means the portion of the EEZ around Hawaii west of 161° W. longitude.

Oceanic sharks means sharks of the families *Carcharhinidae, Alopiidae, Sphyrnidae*, and *Lamnidae*.

Pacific pelagic management unit species has the identical meaning to the term as defined in part 685 of this chapter.

Protected species zone has the identical meaning to the term as defined in part 685 of this chapter.

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, telephone (310) 980–4001, or a designee.

Retention zone means that area of the EEZ in which an FFV may be used to retain Pacific pelagic management unit species to the extent that retention is authorized by this section.

Wahoo means fish of the species *Acanthocybium solandri*.

(c) *Permits.* Each FFV that fishes for Pacific pelagic management unit species in the EEZ must have a permit issued for it under § 611.3.

* * * * *

(j) * * *

(2) *Zones.* The FMP Management Area Group comprises the following closed areas, non-retention zones, and retention zones (unless otherwise noted, the boundaries are measured from the baseline used to measure the territorial sea) described in Table 1 of this paragraph.

TABLE 1

Management area	Closed area	Non-retention zone	Retention zone
Hawaiian Islands	(1) Within the longline fishing prohibited area around Hawaii (see 50 CFR part 685); and (2) Within the NWHI protected species zone (see 50 CFR part 685).	(1) Between the seaward boundary of the longline fishing prohibited area around Hawaii and 100 nautical miles from the islands of Hawaii, Maui, Lanai, Kahoolawe, Molokai, Oahu, Kauai, Niihau, and Kaula.	(1) Beyond 100 nautical miles from the islands of Hawaii, Maui, Lanai, Kahoolawe, Molokai, Oahu, Kauai, Niihau, and Kaula; and (2) Beyond the NWHI protected species zone.
Guam	Within the longline fishing prohibited area around Guam (see 50 CFR part 685).	None	Seaward of the longline fishing prohibited area around Guam.
American Samoa	(1) Within a rectangle around the Tutuila and Manua Islands of American Samoa bounded by 14° and 15° S. latitude and 168° and 171° W. longitude; and (2) Within a 1-degree square surrounding Swain's Island bounded by 10° 33′ and 11° 33′ S. latitude and 170° 34′ and 171° 34′ W. longitude.	None	Areas of the EEZ outside the rectangle bounded by 14° and 15° S. latitude and 168° and 171° W. longitude; and (2) Areas of the EEZ outside the 1-degree square surrounding Swain's Island.
U.S. Possessions	Within 12 nautical miles from shore	None	Beyond 12 nautical miles from shore.

(3) *Effort plans.* The operator of an FFV subject to this subpart who desires to fish in the FMP Management Area Group is required to file an effort plan 2 months prior to entering the retention zones of the EEZ for fishing purposes. The effort plan must indicate the dates when fishing is expected to begin and cease and must specify the areas of the EEZ where the operator intends to use the vessel. Effort plans must be submitted to the Regional Director.

(4) *Catch restrictions.* (i) There is no limit to the amount of Pacific pelagic management unit species that may be caught by the operator of an FFV in the retention zones described in Table 1 of paragraph (j)(2) of this section.

(ii) No operator of an FFV may fish with longline gear to catch and retain Pacific billfish, oceanic sharks, mahimahi, or wahoo within the non-retention zone set out in Table 1 of paragraph (j)(2) of this section.

(iii) Unless otherwise specifically instructed by a U.S. observer or authorized officer, the operator of an FFV who has harvested billfish or oceanic shark using longline gear in the non-retention zone must release the billfish or oceanic shark by cutting the line (or by other appropriate means) without removing the fish from the water.

(iv) No operator of an FFV may fish for Pacific pelagic management unit species in the closed areas set out in Table 1 of paragraph (j)(2) of this section.

* * * * *

(9) *Moratorium on new longline permits for Hawaii EEZ.* No permit to fish in the EEZ around Hawaii will be issued to the operator of an FFV using longline gear during the moratorium on domestic longline permits set forth at § 685.15 of this chapter.

* * * * *

§ 611.81 [Amended]

6. In § 611.81, in paragraphs (j)(5)(i), (j)(5)(ii), (j)(5)(iv), (j)(6)(ii), and (j)(6)(iv), the words "management unit species" are removed and the words "Pacific pelagic management unit species" are added in their place.

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.1, paragraphs (a) and (b) are revised to read as follows:

§ 685.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Pacific pelagic management unit species in the exclusive economic zone (EEZ) in the Pacific Ocean, excluding the

portions of the EEZ seaward of Alaska, Washington, Oregon, and California.

(b) Regulations governing fishing for Pacific pelagic management unit species by fishing vessels other than vessels of the United States appear in 50 CFR part 611, subpart F.

* * * * *

3. In § 685.2, the definitions of "Associated species", "Billfish", and "Management unit species" are removed, and a new definition of "Pacific pelagic management unit species" is added in alphabetical order to read as follows:

§ 685.2 Definitions.

* * * * *

Pacific pelagic management unit species means the following fish:

Common name	Scientific name
Mahimahi (dolphin fish)	*Coryphaena* spp.
Marlin and Spearfish	*Makaira* spp.
	Tetrapturus spp.
Oceanic Sharks	Family Alopiidae
	Family Carcharkinidae
	Family Lamnidae
	Family Sphyrnidae
Sailfish	*Istiophorus platypterus*
Swordfish	*Xiphias gladius*
Tuna and related species	*Allothunnus* spp.
	Auxis spp.
	Euthynnus spp.
	Gymnosarda spp.
	Katsuwonus spp.
	Scomber spp.
	Thunnus spp.
Wahoo	*Acanthocybium solandri*

* * * * *

§ 685.4 [Amended]

4. In § 685.4, in paragraphs (b)(7), (b)(8), and (c)(9), the words "billfish, tuna, oceanic sharks, and associated fish" are removed and the words "Pacific pelagic management unit species" are added in their place.

§§ 685.5 and 685.8 [Amended]

5. In addition to the amendments set forth above, in 50 CFR part 685 remove the words "billfish or associated species" and add, in their place, the words "Pacific pelagic management unit species" in the following places:

a. § 685.5(a) and (b); and b. § 685.8(a).

§§ 685.2, 685.4, 685.5, 685.9, 685.13, 685.15, and 685.25 [Amended]

6. In addition to the amendments set forth above, in 50 CFR part 685, remove the words "management unit species" and add, in their place, the words "Pacific pelagic management unit species" in the following places:

a. § 685.2, in the definition of "fish dealer";

b. § 685.4(a);

c. § 685.5(d), (e), (f), (g), (n), (o), and (r);

d. § 685.9(a);

e. § 685.13;

f. § 685.15(a), (c)(1), and (c)(2); and

g. § 685.25(a)(2), (a)(3), and (a)(4).

7. Section 685.22 is revised to read as follows:

§ 685.22 Annual report.

By June 30 of each year, a plan team appointed by the Council will prepare an annual report on the domestic and foreign fisheries for Pacific pelagic management unit species in the management area.

§ 685.23 [Amended]

8. In § 685.23, remove the words "billfish and associated species" and add, in their place, the words "Pacific pelagic management unit species".

[FR Doc. 92-25887 Filed 10-26-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of the "other rockfish" species category by operators of all vessels and sablefish by operators of vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA) and is requiring that incidental catches be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary to prevent exceeding the total allowable catch (TAC) for the "other rockfish" species category and the share of the sablefish TAC assigned to trawl gear in this area.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), October 21, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The final notice of specifications (57 FR 2844, January 24, 1992) established the TAC for "other rockfish" in the Central Regulatory Area as 6,510 metric tons (mt) and the share of sablefish TAC assigned to trawl gear in the Central Regulatory Area as 1,914 mt.

The Director of the Alaska Region, NMFS, has determined, in accordance with § § 672.20(c)(3) and 672.24(c)(3)(ii), that the TAC for "other rockfish" and the share of the sablefish TAC assigned to trawl gear, respectively, in the Central Regulatory Area have been reached. Therefore, in accordance with § 672.20(e), NMFS is requiring that further catches of "other rockfish" by operators of all vessels and further catches of sablefish by operators of vessels using trawl gear in the Central Regulatory Area must be treated as prohibited species effective from 12 noon, A.l.t., October 21, 1992, through 12 midnight, A.l.t., December 31, 1992.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 21, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-25928 Filed 10-21-92; 2:31 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 208
Tuesday, October 27, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 59

[Docket No. PY-92-001]

RIN 0581-AA66

Refrigeration and Labeling Requirements for Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: In accordance with recent amendments to the Egg Products Inspection Act (EPIA) the Agricultural Marketing Service (AMS) proposes regulations involving temperature and labeling requirements to enhance the safety of table eggs nationwide and to protect the health and welfare of the consuming public. AMS proposes that shell eggs must be stored at an ambient temperature of 45°F (7.2°C) or below after packing and must be transported in refrigerated trucks maintained at a temperature of 45°F (7.2°C) or below. The proposal also contains egg carton labeling requirements to remind consumers that eggs must be refrigerated like other perishable raw agricultural commodities. Further, the proposal contains regulations providing that the Administrator may enter into a stipulation, prior to the issuance of a complaint, with any person to resolve violation cases arising under the Act or the regulations, without resort to formal disciplinary proceedings.

DATES: Comments must be received on or before December 28, 1992.

ADDRESSES: Send written comments, in duplicate, to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 3944-South, P.O. Box 96456, Washington, DC 20090-6456. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays. State that your comments refer to Docket No. PY-92-001. Comments concerning the information collection requirements contained in this action should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attn: Desk Officer for the Agricultural Marketing Service, USDA.

COMMENTS: The Department needs all available information on the proposed changes, favorable or otherwise. To be of the most value, the comments should be as specific as possible and contain any supporting data available. For this proposal, commenters are particularly encouraged to provide specific information concerning how the Department will determine the ambient temperatures of storage facilities and transport vehicles.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Chief, Standardization Branch, 202/720-3506.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 7 CFR parts 56 and 59 to require refrigeration of eggs at or below 45°F (7.2°C) after they are packed into containers destined for the ultimate consumer. The proposed regulations would also require that such containers be labeled to indicate that refrigeration is required.

AMS proposes these requirements to prevent temperature abuse after eggs are packed for consumers. The refrigeration requirements would preclude abusive practices such as eggs being left on shipping docks in warm weather, stored in unrefrigerated areas, or transported without refrigeration. Such practices create the greatest potential for replication of a harmful bacterium such as *Salmonella enteritidis* (*S. enteritidis*). The labeling requirement would remind users of eggs that eggs must be refrigerated like other animal foods until prepared for consumption.

Problem Identified

Salmonellosis is a disease that is often traced to the consumption of foods that contain the Salmonella bacteria. In the past, egg-related outbreaks of salmonellosis resulted from consumption of cracked or dirty eggs which had been externally contaminated. However, in the early 1980's an increasing number of the reported human infections were caused by the *S. enteritidis* serotype and were predominately associated with the consumption of clean sound shell eggs. Further investigation revealed transovarian transmission of the *S. enteritidis* bacterium from hen to egg. The presence of *S. enteritidis* in some clean sound shell eggs has food safety implications throughout the continuum of egg production, processing, packing, transportation, sale, and consumption. If *S. enteritidis* organisms in an egg survive through all the stages of this continuum, a person consuming the egg or products made from it could become ill with salmonellosis. If at any stage the ambient temperature and other conditions allow *S. enteritidis* to multiply in the egg, this risk is increased.

There are critical control points throughout this continuum that allow opportunities to increase or decrease the risk that eggs will cause salmonellosis. Perhaps the most important critical control point is at the end of the continuum, when eggs or foods containing eggs are cooked and served. If the eggs or foods containing eggs are thoroughly cooked and served immediately or refrigerated until served, risks of salmonellosis are minimal.

Other critical control points exist at earlier stages of the continuum. It is possible to reduce the risk of salmonellosis outbreaks by attempting to reduce the incidence of *S. enteritidis* in egg production flocks, or by identifying and restricting the sale of eggs likely to be contaminated with *S. enteritidis*. There are also a number of points in the continuum where risks of salmonellosis can be reduced by maintaining eggs at refrigeration temperatures.

A number of Federal agencies and industry organizations have roles in reducing risk of salmonellosis by attention to critical control points. The Animal and Plant Health Inspection Service (APHIS) has primary responsibility for regulating activities regarding egg production flocks. The Agricultural Marketing Service (AMS) has primary responsibility for activities at egg processing and packing facilities. The Food and Drug Administration, Health and Human Services (FDA) has primary responsibility for activities at retail sales outlets for eggs and at restaurants and other institutions that prepare eggs for consumption.

The National Poultry Improvement Plan (NPIP) is a cooperative APHIS-state-industry effort to prevent and control egg-transmitted, hatchery-disseminated poultry diseases including *S. enteritidis*. The NPIP uses various programs that identify states, flocks, hatcheries and dealers that meet certain disease control standards thus allowing individuals in the commercial egg industry to purchase stock that are tested "clean" of certain diseases, or that are produced under disease-prevention requirements.

APHIS also has implemented a regulatory program to identify and test flocks whose eggs are identified as the probable source of salmonellosis outbreaks caused by *S. enteritidis*, and to restrict the interstate movement of the eggs from such flocks that test positive for *S. enteritidis*. Egg industry associations are also working with USDA to develop voluntary testing programs to determine whether egg production flocks are infected with *S. enteritidis*.

In August 1990, the FDA Model Food Codes Interpretation redesignated shell eggs as a food which requires refrigeration and proper cooking and recommended appropriate time/temperature guidelines for food establishment operators. This interpretation recommended temperature controls on the receipt and storage of shell eggs at the retail level. Subsequently, several States adopted FDA's recommendations, and in some cases, also extended temperature requirements for shell eggs to the producer/processor level in their State laws. These activities address critical control points at the retail sales level and the home, restaurant, and institution food preparation levels.

AMS is proposing requirements to address critical control points during the middle part of the continuum, at egg packing plants and during transport of shell eggs from these plants. Also, several States have adopted similar requirements. These requirements address refrigeration as the most effective means of reducing risk levels at these critical control points.

Refrigeration Studies

Research conducted by separate investigators has identified refrigeration as a significant factor in the reduction of certain bacterial growth in shell eggs packed and destined for the ultimate consumer. Several researchers have found that temperature is the most important variable affecting the growth response of *S. enteritidis*. Generally it has been determined that shell eggs infected with *S. enteritidis* do not exhibit high levels of multiplication of *S. enteritidis* when refrigeration reduces internal egg temperature to 45°F (7.2°C) or below. Certain studies have shown the following: (1) *S. enteritidis* and *S. typhimurium* inoculated into the yolks of eggs ere able to grow when stored at 46°F (8°C). At 50°F (10°C), growth was slow and the lag phase extended. At 54°F (12°C) and above, the organisms grew relatively rapidly with only a short lag phase (Humphrey, T.J., *Veterinary Record*, 126(12): 292, 1990). (2) *S. enteritidis* inoculated into the yolk of shell eggs can multiply to high numbers if the eggs are not adequately refrigerated. No significant growth was observed when the inoculated eggs were held at 45°F (7°C) for up to 94 days (Bradshaw, J.G., *et al., Journal of Food Protection*, 53(12): 1033–1036, 1990). (3) *S. enteritidis* inoculated into the albumen of whole shell eggs multiply to high numbers if the inoculated eggs are not properly refrigerated (Kim, C.J., *et al., Avian Diseases* 33(4): 735–742, 1989). Kim, *et al.*, also found that of the variables studied, temperature was the most important in determining the growth response of *S. enteritidis*. Their experiments demonstrated that *S. enteritidis* inoculated into shell egg albumen, even at low doses, can multiply to substantial levels if held at 50°F (10°C) or higher for a significant period of time.

The research cited above shows that storing eggs at an internal temperature of 45°F or below effectively prevents multiplication of *S. enteritidis* in the eggs. Other research has shown that in addition to preventing multiplication, an internal temperature of 45°F or below reduces the heat resistance of *S. enteritidis* with the result that the organisms are more easily killed by cooking (Humphrey 1990). These findings suggest that a sensible approach to controlling *S. enteritidis* in eggs would be to cool the eggs to 45°F soon after they are laid and to keep them at this temperature until they are cooked and consumed.

However, egg processing methods make it impossible to maintain eggs at 45°F for the entire period between when they are laid and when they are consumed. For modern in-line packers (packers with egg production flocks on the same premises), eggs proceed directly from flock houses to nearby processing buildings without intervening cooling. Egg producers that send eggs off their premises for packing may cool the eggs before they are transported, but this cooling seldom reduces egg temperatures below 50–55°F.

Apart from the fact that current egg production methods do not readily allow eggs to be cooled to 45° before packing, there is a health risk reason not to pack eggs cooled to this temperature. The reason eggs should not be at a temperature of 45°F when they arrive for packing is that part of that process involves washing the eggs in warm water to clean the shell and remove contamination. The sudden temperature change when a chilled egg is subjected to warm (80°F–100°F) wash water can cause two effects that increase the risk that the eggs will become contaminated with *S. enteritidis* or other harmful bacteria. These effects are expansion cracks and egg sweating.

Expansion cracks occur when cool eggs are washed in warm water. These cracks can admit microbial contamination, but as the eggs cool after washing, the cracks close up to the point that they are initially difficult to detect by visual examination. Studies show a linear correlation between the incidence of expansion cracks and the difference between egg temperature and wash water temperature (DeKalb 1977). The risks associated with expansion cracks, therefore, outweigh any benefit resulting from refrigeration prior to packing.

Egg sweating occurs when cool eggs are exposed to warm, moist air, and often occurs during processing in the summer months. Moisture forming on the shells can expedite the passage of waterborne bacteria into the egg through shell pores and expansion cracks. Egg sweating and expansion cracks can both be minimized by ensuring that eggs begin processing at a temperature no more than 50°F lower than the temperature of the wash water.

There is a lag phase associated with fresh eggs contaminated with *S. enteritidis* during which microbial growth is absent or minimal for several days. This lag phase may be associated with bacteriostatic action by the fresh albumen (Brooks, 1960) and relative rigidity of the fresh albumen that prevents free movement of the yolk (Hawthorne, 1950). These factors decrease with storage of the eggs, and microbial growth becomes more likely with longer storage, unless inhibited by refrigeration. However, the lag phase appears to endure for at least 3–5 days. This lag phase provides substantial protection against multiplication of *S. enteritidis* in eggs during the period between when they are laid and when they are packed, when it is not practical to refrigerate them at 45 °F.

Although refrigeration prior to processing would not be an advisable way to attempt to reduce risks of salmonellosis, for reasons discussed above, refrigeration following

processing definitely would reduce these risks. By the end of processing and packing, most eggs would be approaching the end of the lag phase for microbial growth, and bacteriostatic effects of the albumen would be declining. Storage of eggs at a temperature above 45 °F during any period between packing and consumption would afford an opportunity for any *S. enteritidis* present to multiply. Intermittent refrigeration during these final stages of the egg commerce continuum would not effectively reduce risks of salmonellosis, because the organisms could multiply during warmer periods and their numbers would not be significantly reduced by subsequent refrigeration. Therefore we believe, consistent with the changes to the Egg Products Inspection Act discussed below, that the best way to address a critical control point of salmonellosis between packing and cooking of shell eggs is to require continuous refrigeration at a temperature of 45 °F or below.

Requiring refrigeration of eggs at an ambient temperature of 45 °F or below would still allow some variation in risk levels for eggs stored at that temperature. These variations are associated with the rate of cooling for large numbers of eggs stored in refrigerated rooms. The scientific studies cited above show no growth of *S. enteritidis* in eggs at an *internal* temperature of 45 °F, but obviously eggs do not reach this temperature as soon as they are stored under refrigeration. Stacked cartons of eggs in a cold room can take from 9 hours (for the outermost eggs) to several days (for eggs in the center of the stack) to reach a temperature of 45 °F (Bell and Curley, 1966; Canada Department of Agriculture, 1967; Stadelman and Rhorer, 1987). The time required to reach the lowest temperature relates to variables such as the height and volume of stacks of egg containers, and whether the stacks allow ready circulation of cold air.

Egg industry associations and publications have made various recommendations to egg packers and distributors regarding how to minimize the time required for eggs stored in cold rooms and refrigerated vehicles to reach 45 °F. The regulations discussed in this document however, concern only the requirement to store and transport eggs at an ambient atmospheric temperature of 45 °F.

EPIA Amended

Because refrigeration is an important component of any food safety control program, an All-Industry Task Force was formed late in 1990 to survey the egg industry's refrigeration practices and capabilities. Survey results showed strong support for establishing storage and transportation refrigeration requirements. As a result, the Task Force obtained an industry consensus to recommend amendments to the Egg Products Inspection Act (EPIA) (21 U.S.C. 1034). The amendments were enacted on December 13, 1991, as Sec. 1012 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. Law 102–237). The Amendments provide that shell eggs be held at an ambient temperature of no greater than 45 °F (7.2 °C) after packing and that egg cartons and cases be labeled to indicate that refrigeration is required. The amendments will become effective 12 months after the Secretary promulgates the final implementing regulations.

The EPIA has been amended to authorize the FDA to inspect food manufacturing establishments, institutions, and restaurants to ensure that shell eggs in those locations are properly refrigerated and labeled. FDA intends to take appropriate actions to implement this section of the Act. In addition to instituting inspections, FDA may amend its regulations to reflect the need for egg refrigeration and labeling.

Changes to the Regulations

This proposed rule would amend the voluntary shell egg grading regulations (7 CFR part 56) and the mandatory egg and egg products inspection regulations (7 CFR part 59) by requiring that shell eggs be refrigerated at or below 45 °F (7.2 °C) after they are packed into containers destined for the ultimate consumer. The proposed regulations would also require that such containers of shell eggs be labeled "Keep Refrigerated" or with a statement of similar meaning.

The current voluntary regulations (7 CFR part 56) require that shell eggs which are to be identified with an official U.S. identification mark be refrigerated at 60 °F or below. However, since the amendments to the EPIA will require that all shell eggs after packing for the ultimate consumer be held and transported at 45 °F (7.2 °C) or below, AMS proposes to amend 7 CFR part 56 accordingly.

The current mandatory egg and egg products inspection regulations do not contain refrigeration requirements for shell eggs. Therefore, AMS proposes to amend 7 CFR part 59 by adding refrigeration requirements for shell eggs as authorized by the amendments to the EPIA.

Stipulation Procedure for Assessing Penalties

The amended Act includes provisions for imposing civil penalties for certain violations of the mandatory inspection regulations. These penalty provisions are applicable to all phases of the egg and egg products inspection programs except for violations occurring in official egg products plants and those for which criminal penalties have been imposed. The Secretary of Agriculture has the authority under the Act to impose civil penalties through formal administrative proceedings. However, the proposed regulations would permit the Administrator, Agricultural Marketing Service, with the consent of the violator, to settle cases where civil penalties apply by assessing such penalties through a stipulation procedure.

The stipulation would provide the alleged violator the opportunity for a hearing. If a hearing is waived and the alleged violator declines to enter into a stipulation, the AMS Administrator would consider instituting formal proceedings under the Act and regulations to impose civil penalties. Accordingly, AMS proposes to amend the regulations to use the stipulation procedure for violations where circumstances warrant. This procedure would enable AMS to better enforce the Act and regulations by expediting the resolution of compliance cases.

Cost and Benefits

An estimated 1,200 handlers, who are currently subject to shell egg surveillance inspections, would also be inspected to determine compliance with the temperature and labeling requirements. However, based on an estimated first-year compliance cost of $40.67 million and current Government guidelines, the proposed regulations would not have a significant impact on the industry. According to the National Agricultural Statistics Service, 4.893 billion dozen eggs were produced between January 1, 1990, and December 31, 1990, from flocks larger than 3,000 laying hens. During that time the farm level price for table eggs, estimated by the Economic Research Service, was 60.7 cents per dozen. Gross industry proceeds were calculated at $2.97 billion. The estimated first-year compliance costs represent 1.37% of gross proceeds or $0.0083 per dozen. Since the first-year figures include nonrecurring expenditures for facilities and vehicles, the total industry cost will be less in subsequent years. Annual industry costs in subsequent years are estimated at approximately $10 million.

This cost will represent primarily the energy cost of generating refrigeration and the maintenance and replacement costs of facilities and vehicles. Based on an estimated cost of approximately $10 million to maintain compliance after the first year, the estimated annual recurring costs represent 0.35 percent of gross proceeds or $0.0021 per dozen.

Comparing these estimated costs to the estimated benefits of the resulting reduction in risk for salmonellosis clearly shows that the benefits outweigh the implementation and compliance costs. The Centers for Disease Control (CDC) estimates that there are approximately 2 million cases of salmonellosis in the United States annually, resulting in approximately 2,000 deaths (Bennett *et al.*, 1987). CDC also estimates that approximately 10% of these cases (200,000 cases, 200 deaths) are caused by eggs or eggs as an ingredient (components) of other foods. This is based on 1983–87 data.

Using this estimate, the annual dollar cost of egg-related salmonellosis cases due to medical expenses and lost productivity, is estimated at $118–$165 million. However, only 5 percent of salmonellosis cases can be attributed to shell eggs directly, which reduces the dollar cost to an estimated $59–$82 million. More specific epidemiological data collected by the *S. Enteritidis* Task Force indicates that significantly fewer salmonellosis cases than the 200,000 reported by CDC are attributed to shell eggs. This suggests that the estimated cost could be reduced further.

If the requirements proposed by this regulation are enforced, they could not eliminate all of these costs due to egg-related salmonellosis cases. A fully efficient risk reduction program must also address risks presented by improper cooking of eggs and restaurant and institution egg handling practices. Some of the efforts underway to address this problem were mentioned above. In addition, education of consumers and food service organizations in safe handling of eggs has been an ongoing joint USDA/FDA effort. For example, a public awareness campaign was initiated in September 1988 at which time over 50,000 safe egg handling bulletins were distributed to consumers and foodservice establishments. Special emphasis was given to high risk populations particularly vulnerable to *S. enteritidis* infections. The bulletins were revised by AMS in cooperation with FDA in April 1992 and over 3,000 have been distributed. This total includes 1,500 sent by FDA to nursing homes across the country. Both bulletins get extensive exposure at foodservice and other regional exhibits, as well as attention from the newspaper media.

The American Egg Board, a producer-funded research and promotion organization under AMS' oversight, also has developed and widely distributed a variety of safe handling materials. These include approximately 84,000 laminated safe handling charts for foodservice and retail establishment; 275,000 copies of a scientific brochure on salmonellae and eggs; 67,000 copies of a video on safe handling of eggs for foodservice operators; and 77,000 copies of a foodservice guide to safety and handling.

Memorandum of Understanding

To formalize and endorse efforts to reduce the risk of *S. enteritidis* infections in humans, USDA and FDA recently entered into a Memorandum of Understanding. The terms support ongoing and expanded testing, research, and education programs, as well as the refrigeration and labeling requirements included in this proposed rule. The agreement was effected on May 19, 1992, by the Assistant Secretary, Marketing and Inspection Services, USDA, and the Commissioner, FDA, U.S. Department of Health and Human Services.

This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512–1 and has been classified a "non-major" rule under the criteria contained therein. It (i) will not have an annual effect on the economy of more than $100 million; (ii) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or (iii) will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposal rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Public law 102–237 provides that with respect to the temperature requirements contained therein, no state or local jurisdiction may impose temperature requirements pertaining to eggs packaged for the ultimate consumer which are in addition to or different from Federal requirements. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMS Administrator has determined that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule applies to shell egg handlers, some of which may be small entities, packing shell eggs destined for the ultimate consumer. The economic impact on these entities will not be significant because the associated costs reflect only a minimal increase of costs currently borne by egg handlers, and competitive effects are offset by the size of the egg handler and volume of product produced. Furthermore, the proposed requirements are expected to benefit all egg handlers by reducing the potential for growth of harmful bacteria.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and Office of Management and Budget (OMB) regulations (5 CFR part 1320), the information collection requirements and recordkeeping provisions contained in 7 CFR parts 56 and 59 have been approved by the Office of Management and Budget and assigned OMB Control Nos. 0581–0128 and 0581–0113, respectively.

No additional recordkeeping requirements would be imposed as a result of this proposed rule. In 7 CFR 59.28(a)(1), authority is given for Federal and State regulatory inspectors to report and document their findings during surveillance of shell egg handlers and to document violations of 5(d), 8, and 11 of the EPIA. Currently, the inspector spends approximately 12 minutes to collect and record his/her findings. Any added time to record temperature readings and determine whether cartons and cases are labeled would be negligible. However, the Form PY–156, Shell Egg Regulatory Inspection Report, used for these purposes would require a slight modification and will be forwarded to OMB for approval prior to issuance of a final rule. Comments concerning the information collection requirements contained in this action should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attn: Desk Officer for the Agricultural Marketing Service, USDA.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 59

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that title 7, Code of Federal Regulations, parts 56 and 59 be amended as follows.

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

2. Section 56.1 is amended by adding alphabetically three new terms and their definitions to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Ambient temperature means the atmospheric temperature maintained in an egg storage or transport facility.

* * * * *

Container includes any carton, basket, case, cart, pallet, or other receptacle.

(1) *Immediate container* means any consumer package, or other container in which shell eggs, not consumer packaged, are packed.

(2) *Shipping container* means any container used in packing shell eggs packaged in an immediate container.

* * * * *

Ultimate consumer means any household consumer, retail store, restaurant, institution, food manufacturer, or any other interested party who has purchased or received shell eggs for use or resale.

3. Section 56.5 is amended by revising the heading, designating the existing paragraph as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 56.5 Accessibility and condition of product and accessibility of cooler rooms.

* * * * *

(b) The perimeter of each cooler room used to store officially identified shell eggs packed in containers destined for the ultimate consumer shall be made accessible to fully determine the ambient temperature under which officially identified shell eggs are stored.

4. In section 56.35, paragraph (d) is added to read as follows:

§ 56.35 Authority to use, and approval of official identification.

* * * * *

(d) *Refrigeration labeling.* All shell eggs packed in officially identified containers destined for the ultimate consumer shall be labeled that refrigeration is required, e.g., "Keep Refrigerated," or words of similar meaning.

5. A new undesignated centerhead is added and § 56.42 is revised to read as follows:

Refrigeration of Shell Eggs

§ 56.42 Refrigeration requirements.

(a) Officially identified shell eggs packed in an official plant into containers destined for the ultimate consumer shall be stored and transported under refrigeration at an ambient temperature no greater than 45°F (7.2°C).

(b) Officially identified shell eggs packed in an official plant into containers destined for the ultimate consumer shall be labeled to indicate that refrigeration is required.

6. Section 56.76 is amended by revising paragraphs (c)(1) and (f)(1) to read as follows:

§ 56.76 Minimum facility and operating requirements for shell egg grading and packing plants.

* * * * *

(c) * * *

(1) Cooler rooms holding shell eggs packed in containers destined for the ultimate consumer shall be refrigerated and capable of maintaining an ambient temperature no greater than 45°F (7.2°C). Accurate thermometers shall be provided.

* * * * *

(f) * * *

(1) Shell eggs held in the official plant shall be placed under refrigeration at an ambient temperature no greater than 45°F (7.2°C) promptly after packaging into containers destined for the ultimate consumer.

* * * * *

7. Section 56.77 is redesignated § 56.78 and a new § 56.77 is added to read as follows:

§ 56.77 Transport vehicles.

Transport vehicles used to store or transport officially identified shell eggs destined for the ultimate consumer shall be refrigerated and capable of maintaining an ambient temperature of 45°F (7.2°C) or less.

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

8. The authority citation for part 59 continues to read as follows:

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056).

9. Sections 59.1 through 59.970 are designated as subpart A and its heading is added to read as follows:

Subpart A—Regulations Governing the Inspection of Eggs and Egg Products

* * * * *

10. Section 59.5 is amended by adding alphabetically two new terms and their definitions and revising two terms to read as follows:

§ 59.5 Terms defined.

* * * * *

Ambient temperature means the atmospheric temperature maintained in an egg storage or transport facility.

* * * * *

Container or *Package* includes for egg products any box, can, tin, plastic, or other receptacle, wrapper, or cover and for shell eggs any carton, basket, case, cart, pallet, or other receptacle.

(1) *Immediate container* means any consumer package, or other container in which egg products or shell eggs, not consumer packaged, are packed.

(2) *Shipping container* means any container used in packing a product packaged in an immediate container.

* * * * *

Egg handler means any person, excluding the ultimate consumer, who engages in any business in commerce which involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food.

* * * * *

Ultimate consumer means any household consumer, retain store, restaurant, institution, food manufacturer, or any other interested party who has purchased or received shell eggs or egg products for use or resale.

* * * * *

11. Section 59.28 is amended by revising paragraph (a)(1) to read as follows:

§ 59.28 Other inspections.

(a) * * *

(1) Business premises, facilities, inventories, operations, transport vehicles, and records of egg handlers, and the records of all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products. In the case of shell egg packers packing eggs for the ultimate consumer, such

inspections shall be made each calendar quarter.

* * * * *

12. A new undesignated centerhead and § 59.50 are added to read as follows:

Refrigeration of Shell Eggs

§ 59.50 Temperature and labeling requirements.

(a) No shell egg handler shall possess any shell eggs that are packed into containers destined for the ultimate consumer unless they are stored and transported under refrigeration at an ambient temperature no greater than 45°F (7.2°C).

(b) No shell egg handler shall possess any shell eggs that are packed into containers destined for the ultimate consumer unless they are labeled to indicate that refrigeration is required.

(c) Any producer/packer with an annual egg production from a flock of 3,000 hens or less is exempt from the temperature and labeling requirements of this section.

13. Section 59.132 is revised to read as follows:

§ 59.132 Access to plants.

Access shall not be refused, at any reasonable time, to any representative of the Secretary to any plant, place of business, or transport vehicle subject to inspection under the provisions of this part upon presentation of proper credentials.

14. Section 59.134 is amended by revising the heading, designating the existing paragraph as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 59.134 Accessibility of product and cooler rooms.

* * * * *

(b) The perimeter of each cooler room used to store shell eggs packed in containers destined for the ultimate consumer shall be made accessible to fully determine the ambient temperature under which shell eggs are stored.

15. Section 59.410 is amended by revising the heading, designating the existing paragraph as (b), and adding a new paragraph (a) to read as follows:

§ 59.410 Shell eggs and egg products required to be labeled.

(a) All shell eggs packed into containers destined for the ultimate consumer shall be labeled that refrigeration is required, e.g., "Keep Refrigerated," or words of similar meaning.

* * * * *

16. Section 59.690 is amended by revising the first sentence to read as follows:

§ 59.690 Persons required to register.

Shell egg handlers, except for producer-packers with an annual egg production from a flock of 3,000 hens or less, who grade and pack eggs for the ultimate consumer and hatcheries are required to register with the U.S. Department of Agriculture by furnishing their name, place of business, and such other information as is requested on forms provided by and/or available from the U.S. Department of Agriculture.

* * *

* * * * *

17. Section 59.720 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 59.720 Disposition of restricted eggs.

* * * * *

(b) Eggs which are packed for the ultimate consumer and which have been found to exceed the tolerance for restricted eggs permitted in the official standards for U.S. Consumer Grade B, shall be identified as required in §§ 59.800 and 59.860 and shall be shipped directly or indirectly.

* * * * *

18. Section 59.760 is revised to read as follows:

§ 59.760 Inspection of egg handlers.

Duly authorized representatives of the Administrator shall make such periodic inspections of egg handlers, their transport vehicles, and their records as the Administrator may require to ascertain if any of the provisions of the Act or these regulations applicable to such egg handlers have been violated. Such representatives shall be afforded access, at any reasonable time, to any place of business, plant, or transport vehicle subject to inspection under the provisions of the Act.

19. Section 59.915 is amended by revising the heading, redesignating paragraph (b)(9) as (b)(10) and by adding a new paragraph (b)(9) to read as follows:

§ 59.915 Foreign inspection certification required.

* * * * *

(b) * * *

(9) A certification that shell eggs which have been packed into containers destined for the ultimate consumer have at all times after packaging been stored and transported under refrigeration at an ambient temperature no greater than 45°F (7.2°C).

* * * * *

20. In § 59.950 (a), items (4) through (8) are redesignated as (5) through (9), respectively, and a new (4) is added to read as follows:

§ 59.950 Labeling of containers of eggs or egg products for importation.

(a) * * *

(4) for shell eggs, the words "Keep Refrigerated," or words of similar meaning.

* * * * *

21. Section 59.955 is amended by redesignating the second sentence of paragraph (a) as paragraph (b), by redesignating paragraph (b) as (c), and by revising the newly designated paragraph (a) to read as follows:

§ 59.955 Labeling of shipping containers of eggs or egg products for importation.

(a) Shipping containers of foreign product which are shipped to the United States shall bear in a prominent and legible manner: (1) the common or usual name of the product; (2) the name of the country of origin; (3) for egg products, the plant number of the plant in which the egg product was processed and/or packed; (4) for egg products, the inspection mark of the country of origin; (5) for shell eggs, the quality or description of the eggs, except as required in § 59.905; (6) for shell eggs, the words "Keep Refrigerated" or words of similar meaning.

* * * * *

22. A new subpart B is added to read as follows:

Subpart B—Rules of Practice Governing Proceedings under the Egg Products Inspection Act

Scope and Applicability of Rules of Practice

§ 59.1000 Administrative proceedings.

(a) The Uniform Rules of Practice for the Department of Agriculture promulgated in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicating administrative proceedings under section 12(c) of the Egg Products Inspection Act (21 U.S.C. 1041). Official egg products plants are exempt to the extent prescribed in section 12 (c)(6) of the Act from administrative proceedings adjudicated under 12 (c)(1) of the Act.

(b) In addition to the proceedings set forth in paragraph (a) of this section, the Administrator, in his discretion, at any time prior to the issuance of a complaint seeking a civil penalty or any other action under the Act may enter into a stipulation with any person, exclusive of official egg products plants, in

accordance with the following prescribed conditions:

(1) The Administrator gives notice of an apparent violation of the Act of the regulations issued thereunder by such person and affords such person an opportunity for a hearing regarding the matter as provided by the Act;

(2) Such person expressly waives hearing and agrees to a specified order including an agreement to pay a specified civil penalty within a designated time; and

(3) The Administrator agrees to accept the specified order including a civil penalty in settlement of the particular matter involved if it is paid within the designated time.

(4) If the specified penalty is not paid within the time designated in such stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

Dated: October 21, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-26029 Filed 10-26-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1001, 1004, and 1124

[Docket No. AO-14-A65-RO1, etc; DA-91-013]

Milk in the New England and Certain Other Marketing Areas; Revised Tentative Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO-14-A65-R01
1002	New York-New Jersey..	AO-71-A80-R01
1004	Middle Atlantic	AO-160-A68-R01
1005	Carolina	AO-388-A5-R01
1007	Georgia	AO-366-A34-R01
1011	Tennessee Valley	AO-251-A36-R01
1030	Chicago Regional	AO-361-A29-R01
1033	Ohio Valley	AO-166-A62-R01
1036	Eastern Ohio-Western Pennsylvania..	AO-179-A57-R01
1040	Southern Michigan	AO-225-A43-R01
1044	Michigan Upper Peninsula..	AO-299-A27-R01
1046	Louisville-Lexington-Evansville..	AO-123-A63-R01
1049	Indiana	AO-319-A40-R01
1065	Nebraska-Western Iowa..	AO-86-A48-R01
1068	Upper Midwest	AO-178-A46-R01
1079	Iowa	AO-295-A42-R01
1093	Alabama-West Florida..	AO-386-A12-R01
1094	New Orleans-Mississippi..	AO-103-A54-R01
1096	Greater Louisiana	AO-257-A41-R01
1097	Memphis, Tennessee..	AO-219-A47-R01
1098	Nashville, Tennessee..	AO-184-A56-R01
1099	Paducah, Kentucky..	AO-183-A46-R01
1106	Southwest Plains	AO-210-A53-R01
1108	Central Arkansas	AO-243-A44-R01
1124	Pacific Northwest	AO-368-A20-R01
1126	Texas	AO-231-A61-R01
1131	Central Arizona	AO-271-A30-R01
1135	Southwestern Idaho-Eastern Oregon..	AO-380-A10-R01
1138	New Mexico-West Texas..	AO-335-A37-R01

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This revised tentative decision proposes a "modified yield" factor in the Class III-A price formulas adopted on an interim final basis for the New England, Middle Atlantic and Pacific Northwest milk orders to replace the fixed yield factors of 9 and 8.5 used in the previously issued tentative decisions in this proceeding. The revised decision is based on evidence presented at a hearing held on July 30-August 1, 1991, and at a reopening of this hearing on August 20, 1992. The self-adjusting factor will maintain coordination between Class III-A prices and the support program by automatically reflecting changes in the market prices for butter and nonfat dry milk.

The Secretary will determine whether producers supplying milk for the three areas favor issuance of the amendments on an interim basis. Determinations in these three areas will be made by polling cooperatives.

DATES: Comments are due on or before November 27, 1992.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, room 1083-South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The interim amendments will facilitate the orderly disposition of the market's reserve milk supplies.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

When this proceeding was initiated, the Notice of Hearing listed 31 markets and identified the Lubbock-Plainview, Texas (part 1120); the Texas Panhandle (part 1132); and Rio Grande Valley (part 1138) orders separately. A hearing on a merger of these three orders was held in December 1989. As a result of that hearing, the three orders were merged effective December 1, 1991, under the name of the New Mexico-West Texas order, which is 7 CFR part Number 1138. Therefore, in this and future documents in this proceeding, only 29 markets will be listed in that the New Mexico-West

Texas order has replaced the three individual orders named above.

Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33395).

Tentative Decision: Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482).

Revised Tentative Decision: Issued December 24, 1991; published January 2, 1992 (57 FR 15).

Interim Amendment of Orders: Issued December 27, 1991; published January 3, 1992 (57 FR 173).

Notice of Reopened Hearing: Issued August 11, 1992; published August 14, 1992 (57 FR 36609).

Notice is hereby given of the filing with the Hearing Clerk of this revised tentative decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the New England and certain other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this revised tentative decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments and findings and conclusions set forth below are based on the record of a public hearing held at Alexandria, Virginia, on July 30–August 1, 1991, pursuant to a notice of hearing issued July 16, 1991 (56 FR 33395) and reopened on August 20, 1992, pursuant to a notice of reopened hearing issued August 11, 1992 (57 FR 36609).

The material issues on the record of the hearing relate to:

1. Pricing producer milk used to manufacture butter and nonfat dry milk; and

2. The need for emergency action with respect to issue 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background Statement

A public hearing was held July 30–August 1, 1991, to consider the establishment of a separate class and price (III–A) for milk that is used to produce butter and nonfat dry milk under 31 orders. Twelve cooperatives representing dairy farmers supplying milk for such markets proposed that milk so used be priced on the basis of market prices for such dairy products rather than the presently used Minnesota-Wisconsin price, which is driven by the higher-valued cheese market.

On December 10, 1991, the Department issued a decision in this proceeding. The decision adopted a new III–A classification and a product price formula for milk used to make nonfat dry milk (NFDM). There was no change in the classification or pricing of cream used to make butter. The new III–A class and price were adopted for only three markets—New England, Middle Atlantic and Pacific Northwest. Because of the emergency nature of the issue, the decision was issued tentatively so that the pricing changes could be implemented on an interim final basis while public comments on the decision were being submitted by interested parties. On December 24, 1991, the Department issued a revised tentative decision, which changed the Class III–A formula's yield factor from 9 to 8.5. An interim final rule was published effective January 3, 1992, after the requisite producer approval (57 FR 173).

The price changes for the three affected markets were blocked, however, by the U.S. District Court in Nashville, Tennessee, which issued a temporary restraining order on February 11, 1992, just before the January prices were scheduled to be calculated and announced. This action was taken at the request of Dairymen, Inc. (DI), a major cooperative in the Southeast. DI claimed that since III–A pricing was not adopted for the southeastern markets where it manufactures powder, the cooperative would be disadvantaged in competing in the national powder market for sales of nonfat dry milk produced at its three plants. A number of other producer and handler organizations with a variety of viewpoints later joined in this civil action.

On August 4, 1992, the U.S. District Court at Louisville, Kentucky, to which the case was transferred because of a change in venue, issued an opinion upholding the Department's decision on III–A pricing except on one point. The Court ruled that the Department's rulemaking process in changing the formula's yield factor from 9 to 8.5 was procedurally flawed because the revision was made on the basis of an ex parte communication between the industry and the Government.

On the basis of this finding, the Court enjoined the Department from implementing the price changes in the three orders until all interested parties had been given further opportunity to address the question of what the formula's appropriate yield factor should be. It was apparent that the most practical way of correcting the problem identified by the Court was to reopen the hearing.

On the basis of the August 4 Court ruling, the hearing was reopened on August 20, 1992, for the limited purpose of addressing the proper yield factor to be incorporated in the product price formula to be used for pricing Class III–A milk used to make nonfat dry milk under the New England, Middle Atlantic and Pacific Northwest orders where such pricing changes had been approved on an interim final basis.

1. *Pricing producer milk used to manufacture butter and nonfat dry milk.* These findings and conclusions supplement the findings and conclusions of the tentative decision issued on December 10, 1991, and supersede the findings and conclusions of the revised tentative decision issued on December 24, 1991.

A variable yield factor should be adopted in the product price formulas used to compute Class III–A prices under the New England, Middle Atlantic and Pacific Northwest orders (Orders 1, 4 and 124, respectively). Such factor would be computed by subtracting from 9 (which represents the actual physical yield of NFDM in pounds resulting from drying 100 pounds of skim milk) an amount calculated by dividing .4 by the applicable nonfat dry milk price for the month. By providing a flexible rather than a fixed factor in the III–A formulas, a greater degree of coordination between Class III–A prices under the orders and the support price will be automatically maintained even in the event the Secretary decides to change the purchase prices for butter and nonfat dry milk under the price support program.

As described more fully in the preceding background statement, this hearing was reopened on August 20, 1992, in response to a District Court order for the limited purpose of giving interested parties an opportunity to testify on the single issue of what the Class III–A formula's yield factor should be.

Three spokesmen for the proponent cooperatives (Agri-Mark and St. Albans

for New England, Pennmarva for Middle Atlantic and Darigold and Farmer's Cooperative Creamery for Pacific Northwest), which represent a majority of the producers supplying milk for the three markets where Class III–A prices have been tentatively approved, testified on this issue at the reopened hearing. There was a consensus among the three witnesses who testified on behalf of the proponent cooperatives that the price for milk used to make nonfat milk under the order must be closely coordinated with the Department's price support program. All three witnesses emphasized the importance of consistent values being reflected under both dairy programs and insisted that this must be a primary consideration in determining an appropriate yield factor to be used in the Class III–A product price formulas.

Proponents testified that the 9-pound yield factor used in the December 10, 1991, tentative decision would not provide the necessary coordination between Class III–A prices under Federal orders and the support program. To demonstrate the problem, proponents plugged the December 1991 price support numbers into the price support and Class III–A formulas. This computation showed that the Class III–A formula would overstate the value of skim milk in terms of the support program by 36 cents per hundredweight. Proponents then analyzed the values of skim milk under the III–A formula and the price support program at various support prices for butter and nonfat dry milk. They found that at the most likely market prices for butter (75 to 80 cents per pound) and nonfat dry milk (95 to 140 cents per pound) the value of skim milk under the III–A formula with a 9–pound yield factor would exceed the value of such milk as reflected under the price support program by 30 cents or more.

Shortly after the Department's December 10, 1991, tentative decision, the problem of these value differences became evident to Agri-Mark, which submitted an exception. Without seeking further evidenced or argument from the industry, the Department quickly concluded that the yield factor in the Class III–A formula had to be revised. With very limited time to review the circumstances involved, a revised tentative decision, which changed the Class III–A formula's yield factor from 9 to 8.5, was issued on December 24. This change was made to coordinate the Class III–A skim values with such values under the support program. Although the 8.5 factor continued to be referred to as a yield factor in the revised decision, it really represented a coordinating yield factor rather than just an actual physical yield factor for nonfat dry milk.

To specifically address this point, the introductory paragraph of the December 24 revised tentative decision stated:

"These findings are added to supplement the findings and conclusions of the tentative decision issued on December 10, 1991. The tentative proposed a separate price and class for skim milk used to produce nonfat dry milk under the New England, Middle Atlantic and Pacific Northwest marketing orders. That decision provided a special pricing formula for skim milk that is used to make nonfat dry milk (NFDM). The formula used a yield factor of 9. After further consideration, it is concluded that a factor of 8.5 would more appropriately coordinate Class III–A prices with basic formula prices when market prices for milk and dairy products are at support buying levels."

Proponents argued at the reopened hearing that, while changing the yield factor to 8.5 aligned the skim values under the two separate programs in December 1991, this did not serve to be a permanent solution. After further consideration of the matter, proponents concluded that the value differences are related more to the market value of milk than they are to the actual physical yield of NFDM from one hundred pounds of skim milk.

Proponents testified that the market prices for butter and nonfat dry milk changed dramatically in 1992. On January 10, the Secretary announced that the support purchase price for butter would be reduced by 11 cents a pound and the buying price for nonfat dry milk would be increased by about 6 cents per pound while the same $10.10 support level would be maintained. Similarly, on May 6 the Secretary announced the support purchase price for butter would be lowered again by 11 cents per pound and the nonfat dry milk price would be raised 6 cents a pound and the $10.10 support price would be unchanged. After calculating the impact of these shifts in the butterfat and skim values under the support program, proponents realized that a factor of about 8.6 was needed to coordinate Class III–A prices under the orders with skim values under the price support program.

In view of these circumstances, Agri-Mark contended that a new solution needed to be provided. A witness for the proponent cooperative testified that the Class III–A coordinating yield factor must be sufficiently flexible to reflect changes in market prices for butter and nonfat dry milk. In that regard, he testified that the formula's factor must be modified to coordinate the skim values under the two pricing programs, recognizing that the skim values moved up and down with changes in nonfat dry milk prices. He developed an adjustable yield factor of 9 minus an amount computed by dividing .4 by the applicable price for NFDM to accommodate these movements in the market prices for powder.

At the reopened hearing proponents presented the factor as a coordinating yield variable rather than as an actual physical yield factor. There was no direct opposition to what proponents cited as the objective of the "modified factor," which is to coordinate skim values in Class III–A pricing under the orders with such values under the support program.

The new "modified yield" factor, developed by Agri-Mark, should be incorporated in the Class III–A price formula. It addresses many of the concerns of interested parties at the reopened hearing as well as in exceptions filed to the prior tentative decisions.

It is essential, as proponents contend, that the skim value of milk under the Class III–A pricing formula be closely coordinated with its value under the support program. The production of NFDM is closely related to the price support program in that NFDM is one of the three products for which a purchase price is established to carry out the support program's purposes. When milk supplies are very plentiful, NFDM is bought by the Government's Commodity Credit Corporation to support milk prices. When cooperatives are disposing of surplus powder to the Government at the support price, they could be placed in an unfair financial position if the skim milk used to make the powder is overvalued under the orders relative to its value under the support program. This could place cooperatives that are performing a valuable marketwide function of handling market reserves at an unwarranted disadvantage relative to other market participants who are not incurring the same costs.

In developing their original proposal, proponents intended that the Class III–A prices be coordinated with the support program. The product price formula proposed by the cooperatives used the price support yield factors and make allowance for butter and NFDM. By using the price support data, proponents intended that the III–A formula yield values under the order that are consistent with the values reflected

under the support program. However, the earlier tentative decision concluded that the special pricing should be provided for NFDM only. The $1.22 processing allowance used under the support program, though, covers the cost of processing 100 pounds of milk into both butter and powder. No separate cost allowance is provided for making powder only. The record shows that it costs about 12.5 cents per pound to dry skim milk and that factor was used in the formula. In view of the foregoing, it is necessary to modify the yield factor to coordinate the skim values under the two programs. By so doing, the intent of the original Class III–A pricing proposal of the proponent cooperatives will be accomplished.

The new flexible yield factor will automatically maintain alignment between the Class III–A order prices for skim milk and the values of such milk under the price support program. The fixed factors of 9 and 8.5 adopted previously would not provide such automatic adjustments. The benefit of this feature is evident in comparing the skim values under III–A pricing with such values under the support program before and after the 1992 changes in the support purchase prices for butter and nonfat dry milk. As indicated in previous findings, a coordinating yield factor of 8.5 was necessary to reflect the same skim value under the formulas used for Class III–A pricing as well as the price support program in December 1991.

If the same computation is made on the basis of the current price support data ($10.10 support price level with buying prices for nonfat dry milk at 97.3 cents a pound and butter at 76.25 cents per pound), a skim value of about $7.27 is reflected under the formulas for the price support program. Use of the fixed yield factor of 8.5 adopted in the revised tentative decision of December 24, 1991, for Class III–A prices would undervalue the skim milk by about 8 cents per hundredweight when milk and dairy product prices are at the aforementioned support buying levels. To properly coordinate a current yield factor of 8.6 is necessary. This indicates that the III–A formula's yield factor must "float" to reflect changes in product prices. If a fixed factor is provided, a hearing would be necessary to update the factor.

If the market prices for August 1992 ($1.1162 per pound of nonfat dry milk in the Central States production area and the 76.25 cents per pound of butter) are plugged into the price support formula, a skim value of $8.57 is reflected. Likewise, the III–A formula adopted herein with the self-adjusting yield factor will result in the same skim value of $8.57. This uses a "modified yield" factor of 8.64. Hence, under August market prices, an 8.5 yield factor in the III–A formula would undervalue skim milk used to make nonfat dry milk by 14 cents per hundredweight under Orders 1 and 4. Likewise, using the August market prices for Order 124 yields a skim value of $8.32 under the formulas for Class III–A pricing and price supports. If the fixed 8.5 factor were used in the Class III–A formula, the skim milk under that order in August would be undervalued by about 13 cents per hundredweight.

It is calculated that under the formula adopted herein there could be, at most, very minor differences in skim values under III–A pricing and the support program at a wide range of butter and powder prices. For instance, at powder prices ranging from 80 cents to $2.00 per pound and butter prices ranging from 50 cents to $1.00 per pound, the skim values under the two formulas would vary by less than four cents per hundredweight. At the current and most likely market prices for such dairy products, the formulas equate the skim values. In view of the foregoing, the floating yield factor proposed by Agri-Mark should be adopted under the three orders.

In the tentative decision of December 10, 1991, there were a number of comparative calculations which are based on a yield factor of 9. As a result of the change adopted herein to a "modified yield" factor which will vary to reflect changes in product prices, paragraphs 34 through 39 under issue 1 of that decision are revised as follows:

The Class III–A skim value would be computed by subtracting a processing allowance of 12.5 cents from the applicable powder price for the month and multiplying the result by 9 minus an amount computed by dividing .4 by such powder price. For Orders 1 and 4 the Extra Grade powder price for the Central States production area should be used. For Order 124, the Grade A powder price for the Western production area should be used. Using the modified yield factor adopted herein, the skim value of Class III–A milk in August 1991 would have been $6.92 per hundredweight under Order 1 and $6.94 per hundredweight under Order 4. For Order 124, the skim value would have been $6.54 per hundredweight. This compares with a $7.90 skim value under orders providing the M–W price as the Class III price, $8.00 and $8.02 under Orders 1 and 4, respectively, which provided seasonal adjustments to Class III prices, and $7.64 under Order 124, which provided a lower butter-powder "snubber" price for Class III milk in that month.

For Orders 1 and 4, the skim values for Class III–A milk would have averaged about 54 cents per hundredweight less in 1990 and about 43 cents per hundredweight less during the first 10 months of 1991 under the Class III–A pricing formulas adopted herein. For Order 124, the Class III–A skim values would have averaged 69 cents per hundredweight less in 1990 and 53 cents per hundredweight less during January–October 1991.

The skim values for Class III–A milk under the product price formulas provided herein for Orders 1, 4 and 124 would have averaged somewhat lower than such values for Class III milk in both 1990 and 1991. However, it is noteworthy that for Orders 1 and 4 the values would have been lower in seven months and higher in five months of 1990 and lower in all but one month of January–October 1991. For Order 124, skim values under the new formula adopted herein for NFDM would have been lower in 10 months and higher in 2 months of 1990 and lower in each month of January–October 1991.

The price formula provides a modified yield factor of 9 minus .4 divided by the applicable nonfat dry milk price for the month so that the order price for milk used to make NFDM compares favorably with the recognized value of such milk when market prices for milk and dairy products are at supports. A 12.5-cent-per-pound drying cost is compatible with industry experience and also with the processing allowance formerly recognized under the support program in connection with drying whey. Such factor is now used in the computation of the Class II formula price under Federal orders.

The plant operating cost information in this record is not exhaustive. However, there is sufficient data to indicate that the allowance provided in the formula for drying a hundredweight of skim milk into NFDM is not so high that it would create an incentive for handlers to divert milk to drying plants rather than making the milk available to other plant operators processing dairy products demanded by consumers. On the other hand, it is not so low that such plants would be unable to continue functioning as outlets of last resort for distress milk which exceeds the needs of the market's handlers.

The record also indicates that the California Milk Stabilization Branch regularly collects data on operating costs for the purpose of establishing make-allowance costs under the State's milk program. The latest survey covered

plants that processed 98 percent of the nonfat dry milk process in that area. The results of that survey indicate that for a wide range of plant volumes the weighted average per pound cost of producing NFDM was 12.87 cents. Using a yield factor of 8.6, which now results from the modified yield formula, a manufacturing cost of about $1.11 per hundredweight of skim milk is reflected.

Two briefs filed on behalf of a number of interested parties contend that the nine-pound yield factor should be used in any Class III–A pricing formula. They maintain that undisputed evidence in the record establishes that about nine pounds of nonfat dry milk can be made from 100 pounds of skim milk. They contend, and present a number of calculations that purport to show, that a Class III–A price constructed with a nine-pound yield factor should result in a sufficient margin between the cost of skim milk and the returns from nonfat dry milk made from such milk.

The arguments presented in the briefs and the constructed revenues and costs for plants that process nonfat dry milk miss the major issue addressed at the hearing. Butter/powder manufacturers contended, and were able to demonstrate, that they are not able to pay the Class III price for milk with the revenue generated from the sale of nonfat dry milk because the Class III price for milk (essentially the M–W price) reflects a higher value of milk used to produce cheese.

The above-mentioned briefs recognized that when prices are at support levels, both butter/powder plants and cheese plants are intended to have the ability to return the support price for milk to dairy farmers from the revenue generated from selling butter, nonfat dry milk and cheese to the government. Thus, a "normal" relationship between the revenues generated from the sale of butter, nonfat dry milk and cheese is exhibited when market prices are at supports, and butter/powder plants, for example, are not intended to be disadvantaged relative to cheese plants.

When all prices are at supports, a Class III–A price computed with a nine-pound yield factor would be 36 cents per hundredweight greater than the support price for milk at the same butterfat test. Thus, nonfat dry milk manufacturers subject to Federal order regulation would be required to account for milk at a price 36 cents above the manufacturing price for Class III milk that would be applicable to cheese plants. In other words, they would be disadvantaged relative to cheese plants because of the application of the 9-pound yield factor in the III–A formula. This would worsen the situation that proponents were attempting to rectify by their proposals

The allegations presented in the two briefs are unfounded in view of the situation that would confront butter/powder plants subject to Federal orders when prices for butter, nonfat dry milk and cheese exhibit a normal relationship at supports. It is difficult to comprehend how the opposing briefs can conclude that butter/powder plants would be overly compensated if they are subject to a 36-cent higher price and are also expected to return the support price to producers. The price formula contained herein would more closely coordinate the value of milk used for cheese and nonfat dry milk powder when product prices exhibit a normal relationship at support levels. The formula would also reflect such a relationship at market prices above support levels.

2. *The need for emergency action with respect to issue 1.* These findings supplement the findings and conclusions of the tentative decision issued on December 10, 1991.

At the reopened hearing, representatives of the proponent cooperatives testified that emergency marketing conditions continue to exist in the New England, Middle Atlantic and Pacific Northwest marketing areas because of the order pricing of nonfat dry milk and the marketplace value of such product. Witnesses for the respective areas insisted that expedited action on this issue for these markets continues to be appropriate. They asked that the amendments be implemented as soon as possible.

The witness for the Order 1 proponents testified that the need for Class III–A pricing is greater now than it was when the hearing began in July 1991. The Agri-Mark witness estimated that the cooperative lost at least $2.5 million on its nonfat dry milk processing during the past 12 months. As a result of these losses, the cooperative starting in February 1992 began a 20-cent per hundredweight reblend to its members, who have received less than the minimum Order 1 blend price for each month since that time.

The Darigold witness testified that marketing conditions in the Pacific Northwest area also have deteriorated since the initial hearing. A witness for the dairy farmer organization stated that it lost about $5 million in a recent 4-month period and that the allocation of such losses to its members amounted to 31 cents per hundredweight. In addition, Darigold was forced to establish as of May 1, 1992, a monthly producer deduction (reblend) of 30 cents per hundredweight to offset current losses.

Because of the lower prices, some producers have quit Darigold and have started shipping to plants supplied by Darigold. When this happens, Darigold loses a Class I sale and has more milk to process into nonfat dry milk. On the milk Darigold has bought since January from outside its own system, the producer organization has paid only a calculated Class III–A price. In these cases, the selling handlers react to such low prices by trying to sell the milk to Darigold's bulk milk customers, which has the effect of backing more milk up into the handler's powder plants.

The Darigold witness related another situation which recently took place in the Order 124 market. After school was dismissed for the summer, a Class I bottling plant in Spokane offered its surplus milk to one of Darigold's largest store accounts. At the time, the fluid milk plant was getting $1.50 less than the Class III price for any such surplus milk by selling it for powder to Darigold. So the fluid plant decided to sell the extra milk as packaged fluid milk products to the store at a reduced price rather than sell it to Darigold at a larger loss for powder processing.

Darigold testified that an emergency exists in the Pacific Northwest market and asked for a prompt resolution of the proceeding and quick implementation of Class III-A pricing in Order 124.

It is evident from the foregoing that the financial situations facing butter/NFDM processors have not been good. For the two-year period ending with August 1992, the manufacturing margins for such operators have been only about 72 cents per hundredweight. That compares with a recognized manufacturing allowance of $1.22 per hundredweight, which is used by the Secretary in connection with the price support program.

In view of the foregoing, a revised tentative decision should be issued. This will enable the amendments to become effective on an interim basis if they are favored by producers supplying the three markets. In addition, interested parties will have an opportunity to file their comments on the Department's findings and conclusions before this proceeding is finalized.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and

conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid interim marketing agreements and orders:

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2, of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the orders regulating the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire revised tentative decision plus the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

July 1992 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas is approved or favored by producers, as defined under the terms of each of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the respective marketing areas.

List of Subjects in 7 CFR Parts 1001, 1004, and 1224

Milk marketing orders.

Signed at Washington, DC, on October 20, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

Interim Order Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas

(This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

1. The authority citation for 7 CFR parts 1001, 1002 and 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

2. Section 1001.50 is proposed to be amended by revising paragraph (d) to read as follows:

§ 1001.50 Class prices.

* * * * *

(d) Class III–A price. The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

3. Section 1004.50 is proposed to be amended by revising paragraph (g) to read as follows:

§ 1004.50 Class and component prices.

* * * * *

(g) Class III–A price. The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry

milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

4. Section 1124.50 is proposed to be amended by revising paragraph (d) to read as follows:

§ 1124.50 Class prices.

* * * * *

(d) Class III–A price. The Class III–A price for the month shall be the average Western Grade A nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

Interim Marketing Agreement Regulating the Handling of Milk in the Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all inclusive, of the order regulating the handling of milk in the (Name of Order) marketing area (7 CFR part [2]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of July 1992_____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature) (Seal)
By _____
(Name) (Title)

(Address)
Attest _____

[FR Doc. 92–26019 Filed 10–26–92; 8:45 am]
BILLING CODE 3410–02–M

[1] First and last sections of order.
[2] Appropriate Part Number.
[3] Next consecutive Section Number.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–31344; File No. S7–32–92]

Price Protection for Public Limit Orders

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of proposed rule and request for comments.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") today is withdrawing proposed rule 11Ac1–3 under the Securities Exchange Act of 1934 ("Act"). The rule was published in the **Federal Register** on May 4, 1979, at 44 FR 26692. Proposed rule 11Ac1–3 would have required any broker or dealer executing a transaction in a security covered by the rule at a price inferior to the price of any displayed public limit orders to satisfy those limit orders either simultaneously with, or immediately after, such execution. The Commission is withdrawing this rule in large part because more than 13 years have elapsed since it was proposed for comment, and because most public limit orders are now afforded price protection by the Intermarket Trading System ("ITS") and the rules of the various exchanges.

DATES: Comments must be submitted on or before November 27, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–32–92. All comment received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard Cohn, 202/272–3880, Attorney, Branch of the National Market System, Office of Self-Regulatory Organizations and Market Structure, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5–1, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Rule 11Ac1–3 (17 CFR 240.11Ac1–3), proposed in 1979,[1] was intended to provide intermarket price protection for all public limit orders, in certain securities, collected in a market center and disseminated by that market center for display in other market centers ("displayed public limit orders"). The rule would have prohibited any broker or dealer from executing a transaction in any U.S. market center, in any security subject to the rule's provisions, at a transaction price inferior to the price of any displayed public limit order, unless that broker or dealer, either simultaneously with, or immediately after, execution of the transaction, satisfied all such displayed public limit orders having superior prices. If the transaction price was not more than ⅛ point outside the best quotation (*i.e.*, lower than the highest bid or higher than the lowest offer), all displayed public limit orders at superior prices would be satisfied at their limit prices; if the transaction price was ¼ point or more outside the best quotation, all displayed public limit orders at superior prices would be satisfied at the transaction price.

Coverage of the proposed rule would have been limited to reported securities[2] included in a market linkage system implemented or operated in accordance with a plan approved by the Commission under section 11A(a)(3)(B) of the Act.[3] This would have included all securities traded over the ITS [4] and

[1] Securities Exchange Act Release No. 15770 (April 28, 1979), 44 FR 26692.

[2] The term "reported security" was defined to mean (i) any equity security or class of equity securities designated as "qualified securities" pursuant to section 11A(a)(2) of the Act and for which transaction reports are required to be collected, processed and made available pursuant to § 240.11Aa3–1.

[3] 15 U.S.C. 78k–1(a)(3)(B).

[4] The ITS is an inter-market communications linkage, implemented jointly by several exchanges in 1978 pursuant to a plan approved by the Commission, which provides facilities and procedures for the routing of orders for the purchase and sale of multiply-traded securities between

Continued

those listed on the Cincinnati Stock Exchange ("CSE").[5]

As early as 1973, the Commission envisioned the adoption of rules that would "[tie] the individual market centers together" to reduce or eliminate market fragmentation.[6] At that time, the Commission stated that it would consider adoption of a so-called "auction trading rule," to provide "price priority protection for all public orders throughout the [National Market] System." It was anticipated that such a rule would require satisfaction of public limit orders prior to execution of any transaction anywhere else in the system at an inferior price (a lower price, in the case of a bid, or a higher price, in the case of an offer).[7]

The Commission first advanced specific action to provide nationwide protection for public limit orders in 1975, when it announced adoption of rule 19c–1 under the Act.[8] In that release, the Commission called for the development of a computerized central limit order repository, "which would permit the effective integration of existing market makers (both exchange and third market) [9] by ensuring the continuation and extension of the public's ability to obtain priority in competing for executions." [10]

In March 1976, the Commission and the National Market Advisory Board ("NMAB") [11] issued a joint release soliciting public comments on certain issues relating to the development and implementation of a composite limit order book ("CLOB" or "Composite Book"), including policy and technical questions associated with certain specified characteristics of any composite book.[12] It was anticipated that a Composite Book would electronically store and display all limited price orders entered through the exchanges' specialists or qualified third market makers, and allow for automatic execution against those orders by specialists and market makers. Limit orders queued on the Composite Book would have been afforded both price and time priority over other orders, and would therefore have been assured of receiving an execution prior to the execution of any order by a broker or dealer, in any market, that was at the same or an inferior price.[13] In that release, the Commission and the NMAB also sought comment on possible alternative approaches to achieving the goals sought in the Composite Book project.[14]

After considering both the comment letters received [15] and the advice of the NMAB,[16] in January 1978, the Commission requested the self-regulatory organizations ("SRO") to take joint action to develop and implement a "central limit order file" ("CLOF") or "Central File"). As envisioned by the Commission at that time, the Central File essentially would have been a modified version of the Composite Book which would maintain price and time priority for limit orders, but would not have required automatic execution against those orders.[17] Each SRO was requested to inform the Commission of its willingness to undertake joint implementation of a Central File, and was urged to submit a joint plan its design, construction, and operation.[18]

Most of the SROs expressed reservations concerning the creation of a Central File as described in the January Release.[19] Many asserted that a time and price preference for public limit orders would provide a major trading advantage to those orders, thereby creating a disincentive for the commitment of market making capital by dealers, and might eventually force all trading into an automated trading system.[20] Several self-regulatory organizations suggested that the Commission permit the ITS participants sufficient time to develop mechanisms to provide intermarket limit order protection through the ITS.[21] The Commission also received several proposals for alternative means of achieving the goal of intermarket limit order protection.[22]

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market centers for execution. See Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419; Securities Exchange Act Release No. 15058 (August 11, 1978), 43 FR 36732.

[5] Today, CSE is a participant in ITS.

[6] SEC, Policy Statement on the Structure of a Central Market System (March 29, 1973) at 17–18, *as reprinted in* [1973] Sec. Reg. & L. Rep. (BNA) No. 196 at D–1 (April 4, 1973).

[7] *Id.*

[8] Securities Exchange Act Release No. 11942 (December 19, 1975), 41 FR 4507. Rule 19c–1 amended exchange off-board trading restrictions to permit exchange members to execute agency transactions in listed securities over-the-counter with qualified third market makers or non-member block positioners.

[9] The "third market" is comprised of non-exchange-member brokers/dealers and institutional investors trading over-the-counter in exchange-listed securities.

[10] Securities Exchange Act Release No. 11942 (December 19, 1975), 41 FR 4507, at 4510.

[11] The NMAB was established by the Commission, in accordance with section 11A(d)(1) of the Act [15 U.S.C. 78k–1(d)(1)], on September 30, 1975, to furnish to the Commission its views on significant regulatory proposals made by the Commission or any self-regulatory organization, concerning the establishment, operation, or regulation of the securities markets. The Securities Act Amendments of 1975 also directed the NMAB to recommend to the Commission the steps found appropriate to facilitate the establishment of a national market system. Public Law 94–29, section 11A, 89 Stat. 97, 111 (codified as amended at 15 U.S.C. 78k–1 (1988).

[12] Securities Exchange Act Release No. 12159 (March 2, 1976), 41 FR 19274.

[13] *Id.*

[14] *Id.*

[15] These comments are contained in File No. S7–619.

[16] See Letter from NMAB to Chairman and Commissioners, SEC (January 28, 1977). In that letter, the NMAB strongly endorsed the general concept of limit order protection.

[17] See Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354. ("January Release") The Commission described the method of operation of the proposed Central File as follows: Public limit orders would assume their place in, and have an equal opportunity to achieve an execution throughout that system without regard to the market or geographical location from which those orders were entered or in which other transactions required to yield priority to orders in the Central File were effected. Execution priority for orders entered in the Central File over all other orders would be required by rule.

Id. at 4359 (footnote omitted).

[18] *Id.*

[19] See Letter from Richard B. Walbert, President, Midwest Stock Exchange, Inc. ("MSE"), to George A. Fitzsimmons, Secretary, SEC (November 24, 1978); letter from Robert J. Birnbaum, President, American Stock Exchange ("Amex"), to George A. Fitzsimmons, Secretary, SEC (July 10, 1978); letter from Gordon S. Macklin, President, National Association of Securities Dealers, Inc. ("NASD"), to Harold M. Williams, Chairman, SEC (June 7, 1978); letter from James E. Buck, Secretary, New York Stock Exchange ("NYSE"), to George A. Fitzsimmons, Secretary, SEC (May 31, 1978); letter from James E. Dowd, President, Boston Stock Exchange ("BSE"), to George A. Fitzsimmons, Secretary, SEC (May 30, 1978); letter from K. Richard B. Niehoff, President, CSE, to George A. Fitzsimmons, Secretary, SEC (April 30, 1978).

[20] For example, the Amex stated that it believed: That a CLOF would "significantly reduce competition, eliminate many of the trading strategies which investors normally employ, adversely affect exchange auction markets and ultimately force all trading into an electronic system that substitutes machines for the judgment, decision-making and fiduciary undertaking that presently characterizes the relationship between a customer and his broker."

Letter from Robert J. Birnbaum, President, Amex, to George A. Fitzsimmons, Secretary, SEC (July 10, 1978).

[21] Specifically, the NYSE and the MSE submitted proposals which included the electronic dissemination and display of limit order information from each market center and use of the ITS to assure intermarket price protection of displayed limit orders in any market. See Letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC (May 31, 1978); letter from Richard B. Walbert, President, MSE, to George A. Fitzsimmons, Secreatary, SEC (November 24, 1978).

[22] For example, the NASD submitted a "Technical Plan for the Development of a National Market System" ("Technical Plan"). This plan described an electronic facility (based upon the technology and computer facilities of the existing NASDAQ electronic inter-dealer quotation system) functionally similar to the Central File proposed by the Commission. All qualified brokers would be permitted to enter limit orders into the facility for execution by qualified market makers based on price and time priority within the system. See Letter from Gordon S. Macklin, President, NASD, to George A. Fitzsimmons, Secretary, SEC (May 30, 1978).

In March 1979, the Commission determined that because of the potentially disruptive impact of affording absolute time priority to limit orders, it would no longer advocate the adoption of a system, such as the Central File, that afforded limit orders time priority.[23] Instead, the Commission determined that it would seek to achieve nation-wide price protection for displayed public limit orders by means of the ITS. The Commission believed that to achieve this goal, two types of initiatives would be necessary. The first of these initiatives was to be the commitment by each of the ITS participants to work actively toward improving the operating characteristics of the ITS and developing and implementing procedures for the collection, dissemination, and display of limit order information from each market center.[24] The Commission began the second initiative by publishing for comment proposed Rule 11Ac1–3, which would require intermarket price protection for limit orders.

Toward the goal of developing and implementing procedures for the collection, dissemination, and display of limit order information from each market center, the ITS participants proposed to develop a "Limit Order Information System" ("LOIS") which would be based on the existing ITS.[25] The LOIS system would have required specialists to aggregate and enter limit orders for display. Brokers executing a block trade outside of the best bid or offer would have been required to reserve sufficient shares to satisfy LOIS orders and use LOIS to generate commitments automatically at the execution price.[26]

Although the ITS participants made some initial progress in the development of LOIS, the system eventually was abandoned because of disagreement among the participants over its implementation. Later attempts at intermarket price protection of limit orders also were unsuccessful.[27]

II. Comments on Proposed Rule

The Commission received a total of 13 comment letters regarding the proposed rule. Generally, commentators were supportive of the eventual adoption of the proposed rule. Nonetheless, most commentators requested that the Commission delay adoption of the proposed rule until the SROs had compiled with the Commission's request [28] for a joint plan specifying a series of steps by which the mechanisms to provide price protection for all public limit orders would be developed and implemented, at least on a pilot basis.[29]

III. Discussion

The Commission continues to consider price protection for public limit orders to be an important aspect of the National Market System. Nevertheless, in light of the passage of 13 years, and the lack of progress toward the development of a system for the collection and dissemination of limit order information, the Commission believes that proposed Rule 11Ac1–3 should now be withdrawn.

The Commission also considers it significant that the rules of the exchanges, though not providing the level of intermarket price protection that would have been provided by Rule 11Ac1–3, provide some degree of price protection for most public limit orders. For example, in March, 1981, each ITS participant adopted a uniform trade-through rule, which has the effect of protecting limit orders on that exchange, provided the exchange makes an inquiry within five minutes of the publication of the transaction. The rule states that whenever a trade occurs on another ITS participating market center at a price inferior to the price displayed in the exchange's public quotation, the market center trading through the exchange's quote must satisfy, at the displayed price, the entire size of the quote that was traded through.[30]

Each ITS participant also adopted a block-trade policy, which provides that a member executing a block trade in an ITS eligible security, at a price outside the "best" quotation for the security displayed by any ITS participating market, must commit to satisfy superior displayed bids or offers on other ITS market centers, at the block print price.[31] Further, some of the regional exchanges have adopted rules to protect limit orders on their exchanges against price penetration in the primary markets.[32] The NYSE also provides

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[23] Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360. The Commission stated: While the Commission cannot predict accurately the consequences of implementing a limit order protection system based on affording orders in a Central File priority overall other buying and selling interest, the Commission recognizes the possibility that introduction of a system based upon the absolute time priority concept could have a radical and potentially disruptive impact on the trading process as it exists today. Therefore, industry and Commission efforts should be concentrated on the achievement of nation-wide price protection for all public limit orders * * *. *Id.* at 20362–63 (footnotes omitted).

[24] *Id.* Notably, the Commission recently approved a proposed rule change submitted by the NYSE that would publish for viewing by securities information vendors and other financial institutions a specified portion of the limit orders for securities included on the exchange's Display Books. The "Look-at-the-Book" service would have presented eight prices around the current market with total buy/sell limit order quantities for 50 securities. The NYSE decided to not go forward with this service. See Securities Exchange Act Release No. 28915 (February 25, 1991), 56 FR 9036.

[25] See, *e.g.*, Letter from William M. Batten, President, NYSE, to Andrew M. Klein, Director, Division of Market Regulation, SEC (September 7, 1979).

[26] See Securities Exchange Act Release No. 17194 (October 6, 1980), 45 FR 67494. Although the design of LOIS changed somewhat over time, the ITS participants originally envisioned the operation of LOIS as follows: [E]ach individual ITS Participant will gather those limit orders it desires to protect and send a summary to LOIS. The new facility will then total up the various limit order summaries received from the Participants and produce a total display of limit orders entered by ITS Participant Exchanges at various price levels. When a broker/dealer on any ITS Exchange contemplates a trade below the bid or above the offer, he will be able to request a LOIS display which will show him, in advance, the limit orders he must protect. In executing the transaction on an Exchange, the broker will reserve the appropriate number of shares that the LOIS display tells him must be protected on the various participant Exchanges through the ITS linkage. Immediately after the execution, responses will be sent to the Participant Exchanges.

All limit orders included in LOIS will be considered as "firm" orders and only those orders entered into the facility will be protected.

Letter from Richard B. Walbert, President, MSE, to Andrew M. Klein, Director, Division of Market Regulation, SEC (September 7, 1979).*ERR13*

[27] For example, the Pacific Stock Exchange ("PSE") proposed an approach to limit order protection that would employ the existing ITS facilities to permit block positioners to satisfy limit orders in all ITS markets. See Letter from Jim Gallagher, President, PSE, to Ken Rosenblum, Chairman, ITS Operating Committee (April 6, 1981).

[28] See Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360.

[29] See Letters to George A. Fitzsimmons, Secretary, SEC, from: James E. Buck, Secretary, NYSE, (July 13, 1979); Joseph S. DiMartino, Chairman, Institutional Traders Advisory Committee, NYSE, (July 12, 1979); Robert J. Birnbaum, President, Amex (August 22, 1979); James E. Dowd, President, BSE (October 25, 1979); K. Richard B. Niehoff, President, CSE (July 24, 1979); Richard B. Walbert, President, MSE (September 20, 1979); Charles J. Henry, President, PSE (July 18, 1979); Elkins Wetherill, President, Philadelphia Stock Exchange ("Phlx") (July 16, 1979); Gordon S. Macklin, President, NASD (July 25, 1979); Bache Halsey Stuart Shields, Inc., Blyth Eastman Dillon & Co., Inc., Dean Witter Reynolds Inc., E.F. Hutton & Company Inc., Paine, Webber, Jackson & Curtis, Inc., Smith Barney, Harris Upham & Co. (July 12, 1979); William A. Schreyer, President, Merrill Lynch Pierce Fenner & Smith, Inc. (June 14, 1979); Jerome M. Pustilnik, Chairman, Instinet (August 22, 1979); Warren F. Grienenberger, Chairman, Committee on Federal Regulation of Securities, and John M. Liftin, Chairman, Subcommittee on Securities Markets and Market Structure, American Bar Association (July 13, 1979).

[30] See Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520.

[31] *Id.* The policy defines a block as 10,000 or more shares, or securities with a market value of at least $200,000. *Id.* It should be noted that the block-trade policy represents an application of the trade-through rule in a specialized situation.

[32] See, *e.g.*, MSE Article XX, Rule 37. This rule requires MSE specialists to accept and guarantee execution on all agency orders from 100 up to 2,099

Continued

some price protection for limit orders where a block will be traded at a price away from the market.[33]

Because of the foregoing, the Commission has determined to withdraw proposed Rule 11Ac1–3. The Commission emphasizes, however, that it considers price protection for public limit orders to be important and may take further action to ensure such protection, should it prove necessary.[34]

Interested persons are invited to submit written presentations of views, data, and arguments concerning the withdrawal of proposed Rule 11Ac1–3 under the Act and the issues discussed above. These comments will be considered in connection with Commission consideration of other action in support of the development of the National Market System.

By the Commission.

Dated: October 21, 1992.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

shares. The rule also requires the MSE specialists to fill limit orders if the bid or offering at the limit price has been exhausted, the limit price has been traded through in the primary market, or the issue is trading at the limit price in the primary market. The MSE specialist does not, however, have to fill an agency limit order if he can demonstrate that the order would not have been executed if it was placed in the primary market. For example, a limit order on the MSE would not have to be filled if it could be shown that a limit order, at the same price, previously sent to the primary market remained unexecuted.

Some exchanges have additional rules that have the effect of providing some price protection to public limit orders. See, *e.g.*, PSE Rules 5.25(c)(B)(4) and 5.32(b)(1); MSE Article XXX, Rule 2. The MSE rule requires an MSE specialist to give precedence to all agency limit orders in his book, at the same price, over orders that originate with him. For example, if a specialist is bidding for 1,000 shares of ABC at ½ and subsequently receives an agency limit order to buy up to 2,099 shares of ABC at ½, the MSE specialist must give precedence to the agency order.

[33] The NYSE currently enforces a number of rules which provide some price protection for most limit orders. The order of execution of limit orders on the NYSE is governed primarily by NYSE Rule 72, regarding the "priority" and "precedence" of bids and offers.

NYSE Rule 127 contains procedures for members, including block positioners, to follow when effecting block crosses, at a price away from the market, involving 10,000 shares or a quantity of stock having a market value of $200,000 or more. The NYSE has also adopted the ITS trade-through rule and block-trade policy, as set forth in the ITS Plan.

[34] The Commission may consider the issue of price protection for public limit orders further in its Market 2000 Study. Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 5h

[CO–88–90]

RIN 1545–AQ60

Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction of a Court in a Title II Case; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations which provide guidance on determining the value of a loss corporation following an ownership change to which section 382(1)(6) of the Internal Revenue Code of 1986 applies.

DATES: The public hearing originally scheduled for Thursday, October 29, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–8452 or 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 382 of the Internal Revenue Code (57 FR 34736, August 6, 1992). A notice of public hearing appearing in the Federal Register for Thursday, August 6, 1992 (57 FR 34740), announced that the public hearing on the proposed regulations would be held on Thursday, October 29, 1992, beginning at 10 a.m., in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Thursday, October 29, 1992, has been cancelled.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

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Fiscal Service

31 CFR Part 203

RIN Number—1510–AA22

Treasury Tax and Loan Depositaries, Depositaries for Federal Taxes

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the regulations found at 31 CFR part 203 to more accurately reflect current practices, expand certain sections to clarify their intent, incorporate related regulations that currently appear in part 214, and correct a number of editorial errors in the text.

DATES: Comments are due on or before November 27, 1992.

ADDRESSES: Comments may be mailed to Manager, Bank Review Branch, Financial Management Service, 401 14th Street, SW., Washington, DC 20227, room 420 A.

FOR FURTHER INFORMATION CONTACT: Kathryn Miller on (202) 874–6590.

SUPPLEMENTARY INFORMATION: The intent of this rule is to amend by revising the regulations to more accurately reflect current practices. The changes being made and the reasons for them are:

1. Amend §§ 203.1 and 214.7(a)(2) by removing references to certain U.S. obligations. Remove §§ 203.5(a), 203.9(c)(1) and 203.9(c)(3). In a news release dated August 29, 1989, Treasury announced depositaries are no longer allowed to credit payment for public debt securities and U.S. Savings Bonds to the note account.

2. Add three new definitions for clarification: § 203.2(c) *Delivery of advices of credit*, § 203.2(d) *Depositary*, and § 203.2(1) *Procedural Instructions for Treasury Tax and Loan Depositaries*. Redesignate the remaining subsections accordingly. Correct the name of the Federal Reserve publication referenced at § 203.2(f) [formerly § 203.2(d)].

3. Revise § 203.2(k) [formerly § 203.2(i)] and § 203.14(a)(2) [formerly § 203.15(a)(2)] relating to collateral for special direct investments (SDIs). The types of collateral eligible for SDIs have been expanded.

4. Remove reference to the Federal Savings and Loan Insurance Corporation at § 203.2(m) [formerly § 203.2(j)] and § 203.3(b)(1)(i)(B). Federal insurance for savings and loans now is provided by the Federal Deposit Insurance Corporation.

5. Revise § 203.3 referring to designation of Treasury tax and loan depositaries to make it more readable.

6. Remove § 203.5(b) and redesignate the regulations governing the processing of Federal tax deposits (FTDs) by depositaries and Federal Reserve Banks at §§ 214.6(a) and 214.7, respectively, as § 203.5. Remove part 214 from Title 31. Regulations implemented in November 1978 require depositaries for Federal taxes to credit all Federal tax deposits to a Treasury tax and loan account. This regulatory change made a separate Part in the CFR for depositaries for Federal taxes unnecessary.

7. Revise § 203.9 (Note Option) to make it consistent with § 203.10 (Remittance Option), which is also being revised.

8. Revise § 203.9(g) [formerly § 203.9(f)] and 203.14(a)(1) [formerly § 203.15(a)(1)] relating to maximum balances and the collateral requirements for note option depositaries. Effective October 3, 1991, note option depositaries are required to establish a maximum balance and, except for depositaries participating in direct investments, note option depositaries must fully collateralize their maximum balance at all times. This action was taken to reduce the number of potential collateral deficiencies, and thereby reduce Treasury's exposure to risk.

9. Remove § 203.10(b)(2)(ii) (analysis credits) and § 203.10(b)(2)(iii) (excessive flow of deposits). All Remittance Option depositaries now are treated the same with regard to the assessment of late fees.

10. Remove § 203.11. Redesignate the remaining sections accordingly. All special depositaries have been redesignated as Treasury tax and loan depositaries. Thus, a depositary which, as of the close of business on November 1, 1978 was authorized to maintain a tax and loan account, may elect to administer this account under the Note Option or the Remittance Option. If no election is made, the depositary will be presumed to be administering the account under the Remittance Option.

11. Remove specific collateral values at § 203.14(d) [formerly § 203.15(d)] to provide Treasury and the Federal Reserve more flexibility in valuing certain securities.

12. Remove the reference to the time to maturity of collateral covered at § 203.14(d)(9) [formerly § 203.15(d)(9)], to expand the pool of eligible collateral.

13. Make various corrections to grammar, punctuation, and lettering.

Treasury tax and loan depositaries have been advised of the changes referred to in numbers 1, 3, 8, 9, and 12 above directly by the Federal Reserve Banks. The corresponding sections of the Procedural Instructions for Treasury Tax and Loan Depositaries, issued by the Financial Management Service, have been updated.

This rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, and a regulatory impact analysis is not required. As explained above, this revision merely updates and clarifies existing practices. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. For the reasons previously explained, this revision will have very little or no impact on the way financial institutions affected by it conduct their affairs.

List of Subjects in 31 CFR Part 203

Banks, Banking, Taxes.

For the reasons set out in the preamble, Title 31, part 203 of the Code of Federal Regulations, is proposed to be revised as set forth below.

PART 203—TREASURY TAX AND LOAN DEPOSITARIES

Subpart A—General Information

Sec.

Subpart B—Options

Subpart C—Interest and Compensation

Subpart D—Collateral Security

Subpart E—Miscellaneous Provisions

Authority: 31 U.S.C. 3122, 31 U.S.C. 323, 12 U.S.C. 265 and 12 U.S.C. 391.

Subpart A—General Information

§ 203.1 Scope.

The regulations in this part govern the designation of Treasury tax and loan depositaries and their contract with the Treasury Department to process deposits of Federal taxes and to maintain and administer separate accounts to be known as Treasury tax and loan accounts.

§ 203.2 Definitions.

As used in this part:

(a) *Advices of credit* means those Treasury forms which are supplied to depositaries to be used in supporting credits to Treasury tax and loan accounts.

(b) *Business day* means any day on which the Federal Reserve Bank of the district is open to the public.

(c) *Delivery of advices of credit* to the Federal Reserve Bank means delivery of the paper advice of credit form or electronic delivery by Fedline or Voice Response of the information on the advice of credit form.

(d) *Depositary* means a Treasury tax and loan depositary.

(e) *Election of Option form* means a document supplied by the Federal Reserve Bank of each district, on which a depositary indicates the option under which it will administer its Treasury tax and loan account.

(f) *Federal funds rate* means the weekly Federal funds rate as published in the Federal Reserve Statistical Release, "H.15 Selected Interest Rates," which is published weekly by the Board of Governors of the Federal Reserve System.

(g) *Federal Reserve Bank of the district* means the Federal Reserve Bank which services the geographical area in which the depositary is located. Depositaries located in Puerto Rico, the Virgin Islands, and the Panama Canal Zone are included in the Second Federal Reserve District.

(h) *Federal tax deposit form* means a preinscribed form supplied to a taxpayer by the Treasury Department to accompany deposits of Federal taxes.

(i) *Federal taxes* means those Federal taxes specified by the Secretary of the Treasury or the Secretary's delegate as eligible for payment through the procedures prescribed in this part.

(j) *Note Option* means that choice available to a depositary under which funds debited from its Treasury tax and loan account are added by the Treasury to its investments in obligations of the depositary. The amount of such investments will be evidenced by an open-ended interest-bearing note maintained at the Federal Reserve Bank of the district.

(k) *Off premises collateral arrangement* means a collateral custody arrangement established pursuant to § 203.15(c)(2) of this part wherein a depositary is permitted to hold in its possession for the Federal Reserve Bank

collateral security for funds invested with the depositary as special direct investments.

(l) *Procedural Instructions for Treasury Tax and Loan Depositaries* means Volume IV of the Treasury Financial Manual, published by the Financial Management Service.

(m) *Recognized insurance coverage* means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund and insurance provided by insurance organizations specifically qualified by the Secretary of the Treasury pursuant to 31 CFR part 226.

(n) *Remittance Option* means that choice available to a depositary under which funds equivalent to the amount of deposits credited by the depositary to its Treasury tax and loan account will be withdrawn by the Federal Reserve Bank immediately upon receipt by the Federal Reserve Bank of the advices of credit supporting such deposits.

(o) *Reporting cycle* means the time period established for reporting and computation purposes. A reporting cycle begins on the first Thursday of each month and ends on the Wednesday preceding the first Thursday of the following month.

(p) *Reserve account* means that account every member of the Federal Reserve System maintains at the Federal Reserve Bank of its district for reserve purposes pursuant to 12 CFR part 204.

(q) *Special depositary* means a depositary that had been designated under the provisions of 31 CFR part 203 prior to November 2, 1978. A depositary thereafter designated under this part shall be known as a Treasury tax and loan depositary.

(r) *Special direct investment* means the type of addition to a depositary's note account referred to in § 203.9(d) of this part, where the addition specifically is identified as a "special direct investment" and is secured by collateral retained in the possession of the depositary pursuant to the terms of § 203.14(c)(2) of this part.

§ 203.3 Designation of financial institutions as Treasury tax and loan depositaries.

(a) *Previously authorized depositaries.* A special depositary which, at the close of business on November 1, 1978, was authorized to maintain a Treasury tax and loan account is hereby redesignated as a Treasury tax and loan depositary and subject to the provisions of the current part 203.

(b) *New designations.* In order to be designated as a Treasury tax and loan depositary, a financial institution is required to possess under its charter either general or specific authority permitting the maintenance of the Treasury tax and loan account, the balance of which is payable on demand without previous notice of intended withdrawal. A financial institution also is required to possess the authority to pledge collateral to secure Treasury tax and loan balances.

(1) *Eligible institutions.* (i) Every incorporated bank and trust company in the United States, Puerto Rico, the Virgin Islands, every United States branch of a foreign banking corporation authorized by the State in which it is located to transact commercial banking business, and every Federal branch of a foreign banking corporation, the establishment of which has been approved by the Comptroller of the Currency.

(ii) Every financial institution insured by the Federal Deposit Insurance Corporation.

(iii) Every credit union insured by the Administrator of the National Credit Union Administration.

(iv) Every savings and loan, building and loan, homestead association and credit union, created under the laws of any State, the deposits or accounts of which are insured by a State or agency thereof, or by a corporation chartered by a State for the sole purpose of insuring deposits or accounts of such financial institutions.

(2) *Application procedures.* An eligible financial institution seeking designation as a depositary and, thereby, the authority to maintain a Treasury tax and loan account shall file with the Federal Reserve Bank of the district FMS Form 458 "Financial Institution Offer to Contract and Application for Designation as a Treasury Tax and Loan Depositary" and FMS Form 459 "Resolutions Authorizing the Financial Institution Offer to Contract and Application for Designation as a Treasury Tax and Loan Depositary" certified by its board of directors. FMS Forms 458 and 459 are available upon request from the Federal Reserve Bank of the district.

(3) *Designation.* Each financial institution satisfying the eligibility requirements and the application procedures will receive from the Federal Reserve Bank of the district notification of its specific designation as a Treasury Tax and Loan depositary. A financial institution is not authorized to maintain a Treasury Tax and Loan account until it has been designated as a Treasury Tax and Loan depositary by the Federal Reserve Bank of the district.

§ 203.4 Sources of deposits.

A depositary shall credit to its Treasury tax and loan account deposits of Federal taxes or any public funds due to Treasury from the depositary and authorized by the Secretary of the Treasury by regulation to be paid by crediting the tax and loan account.

§ 203.5 Deposits of Federal taxes.

(a) *Deposits with depositaries.* A depositary shall, through any of its offices that accept deposits:

(1) Accept from a taxpayer cash, a postal money order drawn to the order of the depositary, or a check or draft drawn on and to the order of the depositary, covering an amount to be deposited as Federal taxes when accompanied by a Federal tax deposit form on which the amount of the deposit has been properly entered in the space provided. A depositary may accept, at its discretion, a check drawn on another financial institution, but it does so purely on a voluntary basis and absorbs for its own account any float involved.

(2) Issue a counter receipt when requested to do so by a taxpayer who makes a deposit of Federal taxes in cash over the counter.

(3) Place a stamp impression on the face of each Federal tax deposit form in the space provided, regardless of the form of payment. The stamp shall reflect the date on which the tax deposit was received and the name and location of the depositary. The timeliness of the tax payment will be determined by reference to the date stamp on the Federal tax deposit form.

(4) Credit on the date of receipt all deposits of Federal taxes to the Treasury tax and loan account and administer that account pursuant to the provisions of this part.

(5) Forward each day to the Internal Revenue Service Center servicing the geographical area in which the depositary is located the Federal tax deposit forms for all tax deposits received that day. Each submission of deposit information shall be on the prescribed Treasury form and in the aggregate amount of the Federal tax deposit forms.

(6) Establish an adequate record of all deposits of Federal taxes prior to transmittal to the Internal Revenue Service Center so the depositary will be able to identify deposits in the event tax deposit forms are lost in shipment between it and the Internal Revenue Service Center. For tracking purposes, a record shall be made of each deposit showing as a minimum the date of deposit, the taxpayer's identifying number and the amount of the deposit.

The depositary's copies of transmittal letters may be used to provide the necessary information if individual deposits are listed separately showing date, taxpayer's identifying number and amount.

(7) Not accept compensation from taxpayers for accepting deposits of Federal taxes and handling them as required by this section.

(b) *Deposits with Federal Reserve Banks.* A Federal Reserve Bank shall, through any of its offices:

(1) Accept a tax deposit directly from a taxpayer when such tax deposit is:

(i) Mailed or delivered by a taxpayer located within that Bank's territorial boundaries; and

(ii) In the form of cash, a check drawn to the order of that Bank and considered to be an immediate credit item by that Bank, a postal money order drawn to the order of that Bank; and,

(iii) Accompanied by a Federal tax deposit form on which the amount of the tax deposit has been properly entered in the space provided.

(2) When requested to do so by a taxpayer who makes a deposit of Federal taxes in cash over the counter, issue a counter receipt.

(3) When a deposit of Federal taxes is made in accordance with the requirements of paragraph (a) of this section, a Bank shall place in the space provided on the face of each Federal tax deposit form accepted directly from a taxpayer, a stamp impression reflecting the name of the Bank and the date on which the tax deposit was received by the Bank so that the timeliness of the Federal tax payment can be determined. However, if such a deposit is mailed to a Bank, it shall be subject to the "Timely Mailing treated as timely filing and paying" clause of section 7502 of the Internal Revenue Code (26 U.S.C. 7502).

(4) When a deposit of Federal taxes is not in accordance with the requirements governing form of payment set forth in paragraph a) of this section, a Bank shall place in the space provided on the face of each Federal tax deposit form a stamp impression reflecting the name of the Bank and the date on which the proceeds of the accompanying payment instrument are collected by the Bank. This date shall be used for the purpose of determining the timeliness of the Federal tax payment.

§ 203.6 Parties to the contract.

A financial institution which is designated as a Treasury Tax and Loan depositary enters into a depositary contract with the Department of the Treasury. The parties to this contract are the Treasury, acting through the Federal Reserve Banks as fiscal agents of the United States, and each financial institution designated under § 203.3. The terms of the contract include all of the provisions of this part.

§ 203.7 Obligations of the depositary.

A depositary shall:

(a) Administer a Treasury Tax and Loan account in accordance with this part and any amendments or supplements thereto, and instructions issued pursuant thereto, including the Procedural Instructions for Treasury Tax and Loan Depositaries.

(b) Comply with the requirements of section 202 of Executive Order 11246, entitled "Equal Employment Opportunity" (30 FR 12319), as amended by Executive Order 12086, which is incorporated herein by reference, and the regulations issued thereunder at 41 CFR chapter 60, as amended. The Secretary of the Treasury may terminate the contract with a depositary for failure to comply with the terms of the contract set forth in this subsection relating to equal employment opportunity.

(c) Comply with the requirements of section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793, and the regulations issued thereunder at 41 CFR part 60–741, which are incorporated herein by reference, requiring Government contractors to take affirmative action to employ qualified handicapped individuals, and

(d) Comply with the requirements of section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 2012, Executive Order 11701, and the regulations issued thereunder at 41 CFR part 60–250, which are incorporated herein by reference, for the promotion of employment of disabled and Vietnam era veterans.

Subpart B—Options

§ 203.8 General requirement.

A Treasury Tax and Loan depositary shall administer its Treasury Tax and Loan account under either the Note Option or the Remittance Option.

§ 203.9 Note Option.

(a) *Classes.* Depositaries electing this option will be subdivided into Note Option Class A, B, or C depending upon the volume of deposits credited to their tax and loan accounts during the previous calendar year, as specified in the Procedural Instructions for Treasury Tax and Loan Depositaries.

(b) *Additions.* The Treasury will invest funds in obligations of depositaries selecting the Note Option. Such obligations shall be in the form of open-ended notes and additions and reductions will be reflected on the books of the Federal Reserve Bank of the district. A depositary electing the Note Option shall debit, as of the first business day after crediting deposits to its tax and loan account, its tax and loan account in the amount of such deposits and simultaneously credit the note thereby reflecting an increase in like amount in Treasury's investment in obligations of the depositary.

(c) *Delivery.* A depositary administering its tax and loan account under the Note Option shall forward at the close of business each day its advices of credit for that day to the Federal Reserve Bank of the district via the most expeditious means reasonably available. This may include the U.S. Postal Service, in instances where the depositary does not use a faster method for other documents (e.g., checks) being remitted to the Federal Reserve Bank or Branch city.

(d) *Other Additions.* Other funds from the Treasury's operating cash may be offered from time to time to certain Note Option depositaries. Each such Note Option depositary shall have the opportunity to decide whether to receive from the Treasury such additional investments in its notes.

(e) *Withdrawals.* The amount of the note shall be payable on demand without previous notice. Calls for payment on the note will be by direction of the Secretary of the Treasury through the Federal Reserve Banks. A depositary shall arrange for the payment of calls on the payment date specified in the calls by a charge to the reserve account of the depositary or the reserve account of a member bank correspondent.

(f) *Interest.* A note shall bear interest at the rate specified in § 203.12. Such interest is payable monthly by a charge to the reserve account of the depositary or through the reserve account of a member bank correspondent. Specific details about the computations of the amount of interest due, the means of payment, payment dates, Federal Reserve Bank responsibilities, and other related details are described in the Procedural Instructions for Treasury Tax and Loan Depositaries.

(g) *Maximum balance.* A depositary selecting the Note Option shall establish a maximum balance for its note account by providing notice to that effect in writing to the Federal Reserve Bank of the district. That portion of any advice of credit which, when posted at the Federal Reserve Bank, would cause the note balance to exceed the amount specified by the depositary will be withdrawn automatically by the Federal Reserve Bank. The maximum balance applies to that portion of the note

account balance which is secured by collateral deposited in accordance with § 203.14(c)(1) with either Federal Reserve Banks or authorized third party custodians. Special direct investments, which are secured by collateral held by the depositary in accordance with § 203.14(c)(2) under off premises custody arrangements, shall not be considered in determining the amounts to be withdrawn automatically when a depositary's maximum balance is exceeded.

§ 203.10 Remittance Option.

(a) *Remittance Option classes.* Depositaries electing this option will be subdivided into Remittance Option Class 1 or 2 depending upon the volume of deposits credited to their tax and loan accounts during the previous calendar year, as specified in the Procedural Instructions for Treasury Tax and Loan Depositaries.

(b) *Delivery.* A Remittance Option depositary shall establish and maintain procedures to ensure timely delivery of its advices of credit at the Federal Reserve Bank of the district prior to the Federal Reserve Bank's cutoff time for processing such credits the next business day after the date of credit.

(c) *Late fee.* If an advice of credit does not arrive at the Federal Reserve Bank before the designated cutoff hour for receipt of such advices, a late fee in the form of interest at the rate specified at § 203.12 will be assessed for each day's delay in receipt of such advice. Such late fee assessments will be effected on a monthly basis through a depositary's reserve account or the reserve account of a member bank correspondent. Specific details and procedures are included in the Procedural Instructions for Treasury Tax and Loan Depositaries.

(d) *Withdrawals.* For a depositary selecting the Remittance Option, funds equivalent to the amount of deposits credited by a depositary to its Treasury tax and loan account will be withdrawn by the Federal Reserve Bank upon receipt by the Federal Reserve Bank of the advices of credit supporting such deposits. A depositary shall arrange for the payment of withdrawals by an immediate charge to its reserve account or the reserve account of a member bank correspondent.

§ 203.11 Change of option.

A depositary is subject to the provisions of the option it has selected until such time as it provides notice to the Federal Reserve Bank requesting a change of option and receives formal notification from the Federal Reserve Bank of the effective date of the change of option. Specific details regarding changes of option are included in the Procedural Instructions for Treasury Tax and Loan Depositaries.

Subpart C—Interest and Compensation

§ 203.12 Rate of interest.

The rate of interest to be used in connection with the Note Option and the Remittance Option will be equal to the Federal funds rate less twenty-five basis points (i.e., 1/4 of 1 percent). Details about the computation are included in the Procedural Instructions for Treasury Tax and Loan Depositaries.

§ 203.13 Compensation for services.

Except as provided in the Procedural Instructions for Treasury Tax and Loan Depositaries, depositaries will not be compensated for servicing the tax and loan account or for the bookkeeping costs of maintaining that account.

Subpart D—Collateral Security

§ 203.14 Collateral security requirements.

(a) *Note Option.*

(1) Before crediting deposits to its Treasury tax and loan account, a Note Option depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d) and (e) of this section in an amount that is sufficient to cover the sum of 100 percent of the pre-established maximum balance for the note account (see § 203.9(g) of this Part), and the closing balance in its Treasury tax and loan account which exceeds recognized insurance coverage, minus the amount of the note balance attributable to special direct investments.

(2) Before special direct investments are credited to a depositary's note account, a Note Option depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(2) and (e) of this section, and in accordance with the instructions provided in the Procedural Instructions for Treasury Tax and Loan Depositaries, to cover 100 percent of the amount of the special direct investments to be received.

(b) *Remittance Option.* Prior to crediting deposits to its Treasury tax and loan account, a Remittance Option depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d), and (e) of this section in an amount which is sufficient to cover the maximum balance in the tax and loan account at the close of business each day, less recognized insurance coverage.

(c) *Deposits of securities.*

(1) Collateral security required under paragraphs (a)(1) and (b) of this section shall be deposited with the Federal Reserve Bank of the district, or with a custodian or custodians within the United States designated by the Federal Reserve Bank, under terms and conditions prescribed by the Federal Reserve Bank.

(2)(i) Collateral security required under paragraph (a)(2) of this section shall be pledged under a written security agreement on a form provided by the Federal Reserve Bank of the district. The collateral security pledged to satisfy the requirements of paragraph (a)(2) of this section may remain in the pledging depositary's possession and the fact that it has been pledged shall be evidenced by advices of custody to be incorporated by reference in the written security agreement. The written security agreement and all advices of custody covering collateral security pledged under that agreement shall be provided by the depositary to the Federal Reserve Bank of the district. Collateral security pledged under the agreement shall not be substituted for or released without the advance written approval of the Federal Reserve Bank of the district, and any collateral security subject to the security agreement shall remain so subject until an approved substitution is made. No substitution or release shall be approved until an advice of custody containing the description required by the written security agreement is received by the Federal Reserve Bank of the district.

(ii) Treasury's security interest in collateral security pledged by a depositary in accordance with paragraph (c)(2)(i) of this section to secure special direct investments is perfected without the Treasury's taking possession of the collateral security for a period of not to exceed 21 days from the day of receipt of the special direct investment.

(d) *Acceptable securities.* Unless otherwise specified by the Secretary of the Treasury, collateral security pledged under this section may be transferable securities of any of the classes listed below. Collateral will be accepted at values assigned by the Federal Reserve Bank of the district.

(1) Obligations issued or fully insured or guaranteed by the United States or any U.S. Government agency, and obligations of Government-sponsored corporations which under specific statute may be accepted as security for public funds.

(2) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank or the Asian Development Bank.

(3) Obligations partially insured or guaranteed by any U.S. Government agency.

(4) Notes representing loans to students in colleges or vocational schools which are insured either by Federal insurance or by a State agency or private nonprofit institution or organization administering a student loan insurance program in accordance with a formal agreement with the Commissioner of Education under the provisions of the Higher Education Act of 1965, as amended, 20 U.S.C. 1001, or the National Vocational Student Loan Insurance Act of 1965, as amended, 20 U.S.C. 981.

(5) Obligations issued by States of the United States.

(6) Obligations of Puerto Rico.

(7) Obligations of counties, cities, and other governmental authorities and instrumentalities which are not in default as to payments on principal or interest.

(8) Obligations of domestic corporations which may be purchased by banks as investment securities under the limitations established by Federal bank regulatory agencies.

(9) Commercial and agricultural paper and bankers' acceptances approved by the Federal Reserve Bank of the district.

(10) Zero-coupon obligations of the U.S. Treasury and the Resolution Funding Corporation.

(e) *Assignment of securities.* A tax and loan depositary that pledges securities which are not negotiable without its endorsement or assignment may, in lieu of placing its unqualified endorsement on each security, furnish an appropriate resolution and irrevocable power of attorney authorizing the Federal Reserve Bank to assign the securities. The resolution and power of attorney shall conform to such terms and conditions as the Federal Reserve Bank shall prescribe.

(f) *Effecting payments of principal and interest on securities pledged as collateral subsequent to the insolvency of a depositary*—(1) *General.* In the event of the depositary's insolvency or closure, or in the event of the appointment of a receiver, conservator, liquidator or other similar officer to terminate its business, the depositary agrees that all principal and interest payments on any security pledged to protect the note account (if applicable) and the Treasury Tax and Loan account, due as of the date of the insolvency or closure, or thereafter becoming due, shall be held separate and apart from any other assets and shall constitute a part of the pledged security available to satisfy any claim of the United States.

(2) *Payment procedures.* (i) Subject to the waiver in paragraph (f)(2)(iii) of this section, each depositary (including, with respect to such depositary, an assignee for the benefit of creditors, a trustee in bankruptcy, or a receiver in equity) shall immediately remit each payment of principal and/or interest received by it with respect to collateral pledged pursuant to this section to the Federal Reserve Bank of the district, as fiscal agent of the United States, and in any event shall so remit no later than ten days after receipt of such a payment.

(ii) Subject to the waiver in paragraph (f)(2)(iii) of this section, each obligor on a security pledged by a depositary pursuant to this section shall make each payment of principal and/or interest due with respect to such security directly to the Federal Reserve Bank of the district, as fiscal agent of the United States.

(iii) The requirements of paragraphs (f)(2) (i) and (ii) of this section are hereby waived for only so long as a pledging depositary remains solvent. The foregoing waiver is terminated without further action immediately upon insolvency of a pledging depositary or, if earlier, upon notice by the Treasury or the Federal Reserve Bank of the district of such termination. For purposes of this paragraph, a depositary is insolvent when, voluntarily or by action of competent authority, it is closed because of present or prospective inability to meet the demands of its depositors or shareholders.

Subpart E—Miscellaneous Provisions

§ 203.15 Termination of contract.

(a) *Termination by the Treasury.* The Secretary of the Treasury may terminate the contract of a depositary at any time upon notice to that effect to that depositary effective on the date set forth in the notice.

(b) *Termination by the depositary.* A depositary may terminate its depositary contract by submitting notice to that effect in writing to the Federal Reserve Bank of the district effective at a prospective date set forth in the notice.

§ 203.16 Implementing instructions.

A Federal Reserve Bank is authorized to issue instructions consistent with these regulations for carrying out the requirements of this part that shall be binding upon depositaries located in its district.

§ 203.17 Effective date.

This revision of this part is proposed to be effective on October 1, 1992.

Russell D. Morris,

Commissioner.

[FR Doc. 92-25578 Filed 10-26-92; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 920789-2189]

Atlantic Surf Clam and Ocean Quahog Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would amend the regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP). The amendments would: (1) Require vessel owners or operators to notify NMFS prior to departure and provide information including vessel name, vessel permit number, date and time of departure, species targeted, and date and time of expected landing, (2) add a provision that all surf clams or ocean quahogs landed under the notification requirements specified above would be deemed to be landed from the Exclusive Economic Zone (EEZ); (3) make it illegal to fish for, retain, or land surf clams and ocean quahogs on the same trip, and (4) make it illegal to fish for, retain, or land surf clams on a trip designated by a vessel operator as being an ocean quahog fishing trip, or ocean quahogs on a designated surf clam fishing trip. The intended effect of the proposed rule is to enhance enforcement, provide more accurate tracking of individual quotas, and allow for adequate monitoring of the fishery.

DATES: Written comments must be received on or before November 25, 1992.

ADDRESSES: Comments may be mailed to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Surf Clam Notification."

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should

be sent to the Northeast Regional Director (address listed above) and the Office of Management and Budget (Attention NOAA Desk Officer), Washington, DC 20503.

Copies of the Regulatory Impact Review and Environmental Assessment for Amendment 8 may be obtained from John C. Bryson, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 South New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Myles A. Raizin, Resource Policy Analyst, (508–281–9104).

SUPPLEMENTARY INFORMATION: A final rule implementing Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP) was published on June 14, 1990 (55 FR 24184), with the regulations becoming fully effective on September 30, 1990. Existing § 652.9(a) allows the Regional Director, by publication of a notice in the **Federal Register**, to specify notification requirements that vessel owners or operators would have to comply with prior to departure from port or return from a fishing trip for surf clams or ocean quahogs.

A temporary notification requirement was published on December 2, 1991 (56 FR 61182). Vessel owners or operators were required to provide the following information at least 24 hours prior to departure: (1) Name of the vessel; (2) NMFS permit number assigned to the vessel; (3) expected date and time of departure from port; (4) whether the trip will be directed on surf clams or ocean quahogs; (5) expected date, time and location of landing; and (6) the name of the individual providing notice. The industry's reaction to the notification requirements was negative. Some members of the industry claimed they were unaware of the potential for a notification requirement being part of the framework of the FMP. Industry members were nearly unanimous in their allegation that the notification requirement posed some safety problems. The 24-hour notice requirement might have forced some vessel operators to make a trip that they would otherwise not make due to the inability to make the trip as soon as conditions abated. This was particularly severe if the trip was scheduled by a processor; the vessel operator would fall to the bottom of the list of suppliers if the operator could not make the trip in a fairly short period of time. Also, the 24-hour notice requirement removed some of the flexibility from processors. If a vessel that normally supplied a company with surf clams or quahogs broke down or could not make a trip due to weather conditions, the company had to wait at least 24 hours before it could receive product from an alternative source. In light of the opposition from the industry, the notification requirement was withdrawn. The Regional Director announced that any further notification requirement would be developed with the input of the industry and the Mid-Atlantic Fishery Management Council (Council).

Industry representatives, Council members and law enforcement personnel from NMFS and the State of New Jersey held two meetings to discuss the notification requirement. The industry representatives and law enforcement personnel debated the need for a notification requirement; the Council recommended a compromise position. After considering the comments of the industry, the recommendation of the Council, and the concern voiced by law enforcement personnel, NMFS has concluded that a call-in advance notification system providing the same information previously required is needed. NMFS is concerned that the objectives of the FMP and especially Amendment 8 could be undermined if enforcement of the individual transferable quota (ITQ) allocation scheme is in any way compromised. However, in response to comments, NMFS has agreed to delete the 24-hour requirement.

Without an advance notification requirement, vessel operators fishing for surf clams would not have to choose prior to departure whether they will conduct a fishing trip in state or Federal waters. This would allow unscrupulous operators to tag cages of surf clams harvested in the EEZ with state tags, if not observed by law enforcement personnel conducting overflights. A number of individuals have been observed engaged in such activity, and have been charged with violations of the regulations. If this practice is widespread or persists over time, it will lead to overfishing and a decline in stock abundance. If a decline in resource abundance results, the annual quota will be reduced with a concomitant reduction in individual allocations.

The notification system would operate to eliminate this practice in the surf clam fishery as enforcement personnel would have, during surveillance operations, a daily listing of the vessels that are supposed to be fishing in the EEZ. Vessels fishing in the EEZ without giving notice would be in violation of the regulations. Vessel operators who terminate a trip at a sea due to bad weather or other conditions would have to return to the dock and call the appropriate NMFS enforcement office to cancel the trip before being able to fish in state waters for surf clams under a state program requiring cage tagging. While this may appear burdensome for a vessel 50 miles offshore, the vessel would have to steam some 47 miles just to reach state waters. On balance, requiring the vessel to steam an additional 3 miles will have much less of an impact than the mischief that could result from providing an opportunity to claim surf clams caught in the EEZ as having been caught in state waters.

The ocean quahog fishery currently does not have the same inshore/offshore problems experienced in the surf clam fishery. However, the institution of the ITQ system in the quahog fishery makes a quahog allocation a valuable commodity. It is essential that law enforcement personnel have the ability to spot check vessels landing quahogs at the dock, to prevent allocation holders from unlawfully augmenting their allocations through non-tagging of cages. This requires law enforcement to know where these vessels will land their catch. A notification requirement is essential to meet this need. It will also forestall any inshore/offshore problem that might develop in this fishery from time to time.

To provide notice, vessel owners or operators would be required to call the NMFS enforcement office nearest to offloading and give the information specified above. Enforcement offices are located at:

Rockland, ME—(207) 594–7742
Otis AFB, MA—(508) 563–5721
Wakefiled, RI—(401) 789–8022
Brielle, NJ—(908) 528–3315
Marmora, NJ—(609) 390–8303
Shinnecock, LI, NY—(728) 728–0078 ext. 105
Salisbury, MD—(301) 749–3545
Newport News, VA—(804) 441–6760

If, because of bad weather, mechanical breakdown, or similar circumstances, it becomes necessary to cancel or postpone the trip, the vessel owner or operator must contact the same office.

NMFS recognizes that there is a great deal of uncertainty regarding the level of illegal activity that the notification requirement is intended to prevent. There is also some uncertainty with respect to the operational aspects of instituting a call-in system. Accordingly, if a notification requirement is imposed, NMFS will monitor enforcement efforts under it for one year. At that time, the Regional Director, in consultation with the Council, will decide whether to

continue, amend, or withdraw the notification requirement.

This proposed rule also would allow vessel operators to fish for either surf clams or ocean quahogs, but not both, on the same trip. Since the current practice in the fishery is to fish for and land only one species on a trip, this proposed rule would have no effect on the economic viability of the industry. However, it would prevent the potential for intentionally mistagging cages of surf clams with ocean quahog tags.

Ocean quahog prices have historically been lower than surf clam prices. Thus, additional substantial profits may accrue to an owner or operator who places quahog tags on surf clam cages. Although mistagging is prohibited under § 652.8(c)(9), the prohibited harvest, retention, and landing of both species on the same trip would allow for enhanced enforcement of these regulations and more exact monitoring of the catch.

Comments are requested on this proposed rule and will be accepted until November 25, 1992.

Classification

The Regional Director has initially determined that this proposed rule is necessary for the conservation and management of the surf clam and ocean quahog fishery and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law.

The Regional Director has determined that this rule is consistent with the FMP.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration, that this proposed rule, if adopted as proposed, would not have a significant adverse economic impact on a substantial number of small entities. The rule would require vessel owners or operators to make a brief telephone call before departing port, and vessel operators who terminate a trip due to bad weather or other conditions to return to the dock and call the appropriate NMFS enforcement office to cancel the trip before being able to fish in state waters for surf clams under a state program requiring cage tagging. While this may appear burdensome for a vessel 50 miles offshore, the vessel would have to steam 47 miles just to reach state waters. Requiring the vessel to travel an additional 3 miles is a small imposition, compared with the harm to the regulatory system that could result from the opportunity to claim that surf clams actually caught in the EEZ were caught in state waters.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule, which would revise the language in the regulations implementing the FMP, as amended, does not alter the scope or intent of the FMP or the conclusions arrived at in the regulatory impact review (RIR), environmental assessment (EA), or regulatory flexibility analysis (RFA) for Amendment 8 to the FMP, as amended, or implementing regulations. Therefore, this proposed rule is consistent with Executive Order 12291 and the Regulatory Flexibility Act.

This action is categorically excluded by NOAA Directive 02–10 from the requirement to prepare an EA. The EA prepared for Amendment 8 to the FMP assessed the impacts of ITQs on the human and biological environment. The action does not alter or affect the human environment and is taken to enhance programmatic functions associated with Amendment 8 of the FMP, specifically, the functions of enforcement of the regulations and monitoring of the individual quotas.

Copies of the RIR, EA, and RFA for Amendment 8 may be obtained from the Mid-Atlantic Fishery Management Council (see ADDRESSES).

The notification requirement contained in this proposed rule is a new collection-of-information subject to the Paperwork Reduction Act. The collection of this information requires modification of existing collections under OMB #0648–0202 to reflect the reporting burden (2 minutes per response). A request to collect this information has been submitted to the Office of Management and Budget for approval. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Richard Roe, NMFS, and to the Office of Management and Budget (Attention: NOAA Desk Officer) (see ADDRESSES, above).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator has initially determined that this rule would be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State of Maine has responded previously that fishery management is not a listed activity under Maine's coastal management program and that no consistency review is required.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: October 20, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 652 is proposed to be amended as follows:

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

1. The authority citation for 50 CFR part 652 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 652.8, existing paragraph (c)(19) is revised, existing paragraph (c)(20) is redesignated as paragraph (c)(22), and new paragraph (c)(20) and (c)(21) are added to read as follows:

§ 652.8 Prohibitions

* * * * *

(c) * * *

(19) Fish for surf clams or ocean quahogs in the EEZ without giving prior notification pursuant to § 652.9(a);

(20) Fish for, retain, or land surf clams and ocean quahogs in or from the EEZ on the same trip;

(21) Fish for, retain, or land ocean quahogs in or from the EEZ on a trip designated as a surf clam fishing trip under § 652.9(a)(4), or fish for, retain, or land surf clams in or from the EEZ on a trip designated as ocean quahog fishing trip under § 652.9(a)(4); or

* * * * *

3. In § 652.9, existing paragraph (a) is revised, existing paragraphs (b) and (c) are redesignated as paragraph (c) and (d), and a new paragraph (b) is added to read as follows:

§ 652.9 Facilitation of enforcement.

(a) *Notification requirements.* Vessel owners or operators are required to call the NMFS enforcement office nearest to the expected point of offloading, to provide the following information accurately prior to the departure of their vessel from the dock to fish for surf clams or ocean quahogs in the EEZ:

(1) The name of the vessel;

(2) the NMFS permit number assigned to the vessel;

(3) the expected date and time of departure from port;

(4) whether the trip will be directed on surf clam or ocean quahogs;

(5) the expected date, time and location of landing; and

(6) the name of the individual providing notice.

(b) All landings of surf clams or ocean quahogs from a trip for which notification was provided under paragraph (a) of this section are deemed to have been harvested in the EEZ and will count against the annual individual allocation.

* * * * *

[FR Doc. 92-25930 Filed 10-26-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 208
Tuesday, October 27, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Canyon Creek Recovery and Rehabilitation; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for resource management activities that will reduce fuel accumulations and the continuity of fuels in the Canyon Creek drainage, reduce impacts to stream channels that may result from large-scale wildfire occurrences; increase health, vigor, stocking and species diversity of stands for long-term vegetative growth, and provide thermal recovery and promote watershed recovery; salvage lodgepole pine before it loses its value; and clear road surfaces and ditches of dead lodgepole pine to enable road maintenance to be accomplished without barriers of down material.

The EIS will tier to the final EIS and Forest Plan for the Kootenai National Forest (September 1987).

The proposed activities are located, wholly or in part, in the Canyon Creek drainage. The project analysis area is located approximately 18 miles east of Libby, Montana. The proposed projects would be implemented between calendar years 1993 through 1998.

The specific projects include: (1) Construction of shaded fuelbreaks; (2) implementation of a series of area wide, salvage-type, timber sales. This includes post harvest activities such as slash abatement, site preparation, reforestation, and monitoring on approximately 338 acres; (3) seasonal closure of five existing roads; (4) installing additional road drainage features; and (5) burning 141 acres designed to convert an existing dead and downed submerchantable lodgepole pine stand to its original ponderosa pine ecosystem.

There will be no new road construction as part of this proposal. Existing roads will be evaluated for improving drainage, using Best Management Practice guidelines.

The project, as presently proposed, will most likely involve a short term departure from the peak water flow increase thresholds as described in the Kootenai Forest Plan.

The Kootenai National Forest invites written comments and suggestions on the scope of the analysis in addition to comments already received as a result of a preliminary local public participation field review. The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope and implementation of this proposal must be received by December 1, 1992.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Lawrence A. Froberg, District Ranger, Fisher River Ranger District, 12557 Hwy. 37, Libby Montana, 59923.

FOR FURTHER INFORMATION: Direct questions about the proposed actions and environmental impact statement to Mike Johnson, Interdisciplinary Team Leader, Fisher River Ranger District, 12557 Hwy. 37, Libby, Montana, 59923. (Phone: (406) 293–7773).

SUPPLEMENTARY INFORMATION: Mountain pine beetle infestations in the Canyon drainage have killed some 50–90% of the lodgepole pine on approximately 3,000 acres. The stands vary from 20 to 100% lodgepole pine. The high fuel loadings create a significant potential for large stand replacement wildfires in the foreseeable future.

The proposed action includes the following: 1. A series of timber sales covering a total of 332 acres (17 units), where all dead merchantable lodgepole pine and very limited amounts of green timber would be removed. Removal of species other than lodgepole will be done to achieve silvicultural objectives, such as the elimination of mistletoe infected overstory. Silvicultural systems include: 153 acres of clearcut with reserves, 170 acres of seedtree, and 9 acres of salvage. Additionally, all dead lodgepole would be removed from areas within 60 to 75 feet of specific roadsides, totaling approximately 56 acres. The total estimated harvest volume for this proposal would be 1.5 million board feet of timber.

2. Construct shaded fuelbreaks, most of which would be accomplished with the 17 units listed above. One additional fuelbreak (10 acres) would also be constructed. All fuelbreaks would be built perpendicular to the slope, and incorporate slash treatments such as underburning, hand, or machine piling.

3. Approximately 141 acres of submerchantable lodgepole would be burned in the North Fork of Canyon Creek, and would be planted with mixed species.

4. Seasonal closures would be implemented on five existing roads to mitigate for loss of cover and big game security.

5. Install additional road drainage features such as outslopes, driveable dips, and culverts to the existing road system.

This EIS will tier to the Final EIS and Kootenai Forest Plan. The Forest Plan provides goals and objectives, forest-wide standards and guidelines, management area standards and guidelines, and management area prescriptions for the various lands on the Forest. This direction provides for management practices that will be utilized during the implementation of the Forest Plan.

The analysis will consider a range of alternatives. Along with the proposed actions and all reasonable action alternatives, the analysis will consider a "No Action" alternative.

Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the Draft EIS.

The scoping process includes:

—Identifying potential issues.
—Identifying major issues to be analyzed in depth.

—Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
—Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
—Determining potential cooperating agencies and task assignments.

Public participation to this point involved mailing a written presentation of the preliminary proposal to 18 individuals, including local timber industry individuals, State of Montana Health and Environmental Sciences and State of Montana Department of Fish, Wildlife and Parks and Northwest Montana ecologically-concerned groups such as Cabinet Resource Group, National Wildlife Federation and the Montana Wilderness Association. There has also been personal contacts with local residents by the Interdisciplinary Team Leader. Future public participation will include continued public meetings, personal contacts, and contact through the media and written material. The following issues have been identified through the scoping efforts, including a NO ACTION alternative, that have occurred to date:

—What effect would the proposals have on annual peak flows and sediment delivery to stream channels?
—What effect would the proposal have on wildlife and fisheries resources?
—With peak flow increases, what will be the effect on downstream spawning areas and fish populations?
—What effect will NO ACTION have on the watershed, as the lodgepole pine component continues to unravel and the potential for catastrophic wildfires increase?
—What effect will the ecosystem burn have on coniferous species diversity, wildlife habitat and the watershed?
—What effect would the project have on air quality?
—Are there any sensitive, threatened, or endangered plant or animal species in the area?

How would this project affect them if they are present?

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by April, 1993. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The final EIS is scheduled to be completed by August, 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Lawrence A. Froberg, District Ranger, Fisher River Ranger District, Kootenai National Forest, 12557 Highway 37, Libby, Montana, 59923, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed projects will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: October 16, 1992.

L.A. Froberg,

District Ranger, Fisher River Ranger District, Kootenai National Forest.

[FR Doc. 92-25974 Filed 10-26-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Sullivan Salvage Timber Sale From Appeal, Colville National Forest, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of exempt decision from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Sullivan Salvage Timber Sale on the Sullivan Lake Ranger District of the Colville National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in **Federal Register** on January 23, 1989, (54 FR 3342).

DATES: October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Edward C. Schultz, Forest Supervisor, Colville National Forest, 765 S. Main, Colville, Washington 99114 or Andy Mason, Sullivan Lake District Ranger, 12641 Sullivan Lake Road, Metaline Falls, Washington 99114, phone (509) 446-7580.

SUPPLEMENTARY INFORMATION: In October 1991, a severe windstorm in Eastern Washington blew down trees across portions of the Colville National Forest, including areas on Sullivan Lake Ranger District.

This Forest Service proposal covers approximately 115 acres following existing roads, where individual blown down trees would be salvaged for a total of 50,000 board feet. Forest Road 300 is now impassable. There are two areas of concentrated blow down next to existing harvest units totalling five acres that would be removed in addition to roadside salvage.

The proposal area is in Management Area (MA) 2, Caribou Habitat, with the objective to manage woodland caribou habitat to provide sufficient suitable seasonal habitat as specified in the Caribou Recovery Plan. The salvage is also within designated recovery zone for Grizzly Bear. This sale occurs along roads that are open for public use and not gated. Timber harvest is permitted within MA 2 provided that it follows the "Guidelines for Management With the Selkirk Mountain Caribou Habitat" as outlined in the Colville National Forest Land and Resource Management Plan, Final Environmental Impact Statement, Appendix I. Roadside habitat is considered to be of limited use by caribou. The area 1/4 mile on either side of open roads is not considered suitable security for grizzly.

As soon as the area opened up in June 1992, an interdisciplinary team (IDT) reviewed several sites on the District and began analysis. Three salvage sale analyses have been completed and

decisions issued. Sullivan Salvage is the fourth and final salvage sale reviewed. The IDT identified the need to salvage the dead timber in as short a time as possible so the logs would remain merchantable. The blown down timber consist predominantly of western redcedar and western hemlock, with lesser amounts of Englemann spruce, subalpine fir, western white pine, and Douglas fir. Deterioration of the net sawtimber volume has occurred as a result of "checking" and sap rot. Merchantable volume has already been reduced to 30 percent.

As this area is located in higher elevation, access for logging and hauling is limited to the months of June through November. In the two areas of concentrated blow down, regeneration with nursery seedlings is planned in Spring of 1993.

In June 1992, the Sullivan Lake Ranger District proposed the salvage harvest of the blow down timber and the public scoping process started. A scoping letter was sent out to interested publics on the District mailing list. Responses were received from timber industry, a users group, and environmental groups. Thirteen issues were identified. These issues included: Impacts to old growth; removal of wildlife habitat; disturbing threatened, endangered or sensitive species; increased erosion and nutrient depletion; spread of noxious weeds; increased grazing access; soil compaction; increased off road vehicle access; increased snag removal by firewood cutters; importance of salvage in a healthy forest; salvage criteria; and impacts to riparian areas. A response to these issues was developed and put in the project file for this analysis.

Biological evaluations were prepared in conjunction with the environmental analysis for the four salvage projects analyzed this summer. Evaluations indicated the projects would have no effect on any threatened and endangered species. Mitigation measures would be implemented according to the evaluation. A copy of the biological evaluation has been sent to U.S. Fish and Wildlife Service for informal consultation pursuant to section 7 of the Endangered Species Act.

The salvage sale and accompanying work is designed to accomplish the rehabilitation objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this salvage project this project is exempted from appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

Decision related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the decision memo for the Sullivan Salvage Timber Sale may be signed by the District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: October 20, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-25984 Filed 10-26-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Friday Salvage, Benefield Salvage, Canoe Salvage, East Nineteen Salvage, Kid Salvage, Lassie Salvage, Rattlesnake Salvage, Tecumseh Salvage, Yankee Doodle Salvage, and Independent Salvage Timber Sales From Appeal, Colville National Forest, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decisions to implement the Friday Salvage, Benefield Salvage, Canoe Salvage, East Nineteen Salvage, Kid Salvage, Lassie Savlage, Rattlesnake Salvage, Tecumseh Salvage, Yankee Doodle Salvage, and Independent Salvage Timber Sales on the Kettle Falls Ranger District on the Colville National Forest are exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989, (54 FR 3342).

DATES: October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Edward C. Schultz, Forest Supervisor, Colville National Forest, 765 South Main, Colville, Washington 99114, or Bruce Bernhardt, Kettle Falls District Ranger, 255 West 11th Street, Kettle Falls, Washington, phone (509) 738-6111.

SUPPLEMENTARY INFORMATION: In the fall and winter of 1991 there were two windstorms that did extensive damage to several stands of timber throughout the Kettle Falls Ranger District. The proposal covers approximately 515 acres on ten salvage sale areas. Total net volume estimates from the spring of 1992 indicate that the harvest would produce about 765,000 board feet of timber. All of the affected areas are within suitable stands for timber management.

In the spring and summer of 1992, stands where timber salvage is authorized under the Colville National Forest Land and Resource Management Plan were identified. The Management Areas include: 3A (Recreation), where timber harvest is allowed outside of developed recreation sites; 5 (Scenic/Timber), provides visual resource along major travel routes while providing wood products; 7 (Wood/Forage), where timber production is managed for optimum levels while protecting basic resources; and 8 (Winter Range), where salvage is permissible if wildlife habitat needs are maintained.

The Interdisciplinary Team (IDT) determined the need to salvage the wind damaged timber in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 12 inches in diameter at breast height. Rapid drying of dead trees is resulting in cracking or "checking", especially of the smaller diameter trees, which will quickly reduce merchantability as sawlogs.

During this first season following the heavy mortality, there will be very little germination of seed. In some areas, the scarification of the soils by the logging operations and the site preparation will facilitate the natural regeneration of the dead stands and establish new stands more quickly.

In spring of 1992, the Kettle Falls District Ranger proposed the salvage harvest of the windthrown timber. Analysis was initiated in June 1992, with a letter sent to individuals, State and Federal Agencies and other interested parties discussing the proposed salvage sales. Issues identified include: Impacts on recreational sites and visual quality; long term site productivity; and road density. No trees will be removed that would result in disturbance to riparian areas, areas of highly erodible soils will be avoided in harvest, and no new roads will be built except for logging spurs which will be closed after harvest activities. Adequate down woody material will be left. Visual quality will be improved and recreational sites protected.

The areas have been surveyed for cultural resources, with no new sites located. A biological evaluation of the areas determined that the proposed projects would have "no effect" on threatened, endangered, or sensitive species of wildlife or plants.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite these sales and the accompanying work these projects are

exempted from appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Memos for the Friday Salvage, Benefield Salvage, Canoe Salvage, East Nineteen Salvage, Kid Salvage, Lassie Salvage, Rattlesnake Salvage, Tecumseh Salvage, Yankee Doodle Salvage, and Independent Salvage Timber Sales may be signed by the District Ranger. Therefore, these projects will not be subject to review under 36 CFR part 217.

Dated: October 20, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-25987 Filed 10-26-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Lookout Creek Salvage Sale From Appeal, Ochoco National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Lookout Creek Salvage Sale Categorical Exclusion on the Big Summit Ranger District of the Ochoco National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in **Federal Register** on January 23, 1989, (54 FR 3342).

DATES: October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Bruce E. Wilson, District Ranger, Big Summit Ranger District, 348855 Ochoco Ranger Station, Prineville, Oregon 97754; phone (503) 447-9645.

SUPPLEMENTARY INFORMATION: In summer, 1992, approximately 80 trees blew down in the Lookout Creek drainage. These trees were scattered throughout the drainage. Public involvement occurred during the course of the summer through a scoping letter mailed to several individuals who are specifically interested in activities occurring on Big Summit Ranger District. Scoping continued through personal contacts and exchanges of letters with several members of the public. As a result of public input, two to three trees in the riparian area were withdrawn from salvage in order to provide large woody debris on the site.

The Lookout Creek Salvage Sale proposes to harvest approximately 70,000 board feet within 5 acres. The sale and accompanying work are designed to accomplish the Forest Health objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work this project is exempt from appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Memo for the Lookout Creek Salvage may be signed by the Forest Supervisor. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: October 20, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-25985 Filed 10-26-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Colt Project Area From Appeal, Ochoco National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Colt Project Area environmental assessment on the Prineville Ranger District of the Ochoco National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989, (54 FR 3342).

DATE: October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas A. Schmidt, Forest Supervisor, Ochoco National Forest, P.O. Box 490, Prineville, Oregon 97754; or Alan Horton, District Ranger, Prineville Ranger District, Ochoco National Forest, Prineville, Oregon 97754, (503) 447-9641.

SUPPLEMENTARY INFORMATION: During the last decade the defoliation and mortality caused by the Spruce Budworm and associated pests of Douglas-fir and white fir stands of the Ochoco National Forest has become epidemic and forest wide. In some stands the mortality was nearly total, and no stand with fir was left unaffected. One of the hardest hit areas is in and around the Colt Project Area on the Prineville Ranger District.

In the Colt Project Area the outbreak of the Spruce Budworm occurred in 1983, and spread throughout the area by 1985. The infestation increased in severity with each year, persisting to the present. Though some death was always associated with the outbreak, widespread mortality has occurred only during the last three years, 1990-1992, taking as much as 80 percent of the Douglas-fir and white fir within some strands.

Recognizing the infestation had not run its anticipated course, and that unexpectedly high mortality would occur, the area was examined to determine an appropriate course of action. An environmental analysis was completed in August 1992, and discloses effects of alternatives to rehabilitate the resources within the project area.

The interdisciplinary team (IDT) identified the need to balance market and non-market outputs, improve forest health, reduce fuels loading and risk of catastrophic fire, and improve riparian and stream conditions. The Colt project is timber harvest with the related activities of reforestation, road construction, precommercial thinning, and fuel treatment. Additional connected actions and mitigation measures include log and boulder placement in creeks, riparian plantings, access management, construction of two stock ponds, and soil tilling.

The IDT began scoping in July 1989, with a scoping letter mailed to individuals, groups, and agencies. Scoping continued throughout the process via open house meetings, newsletters, coordination meetings with other agencies, and written communications.

From the meetings, press releases, and contacts with individuals and State and Federal agencies, five major issues were identified. These were:

1. Potential timber harvest effects of adding slash to already heavy fuel loadings and of increasing the risk of catastrophic fire.

2. Potential effects, from both timber harvest and connected actions, on the scenic quality within the Summit Historic Trail Management Area and on the integrity of the trail itself.

3. Effects of the current insect outbreak and associated tree mortality on the ability of the forest to meet management objectives identified for the area.

4. Potential effects of timber harvest, road management, and insects on the quality and quantity of big game habitat.

5. Potential effects of timber harvest and connected actions on water quality.

The IDT developed three alternatives to analyze, including the No Action Alternative. The effects of the Forest Service proposal and its alternatives are disclosed in the Colt Project Area environmental assessment which was prepared for the proposal. Alternative 3 would harvest about 522 acres of area, 189 acres of Shelterwood Cut and 333 acres of Improvement Cut. Alternative 3 would harvest about 1.5 million board feet (mmbf); .6 mmbf of Douglas-fir, and .9 mmbf of white fir. Approximately .85 mile of roads would be constructed. This alternative is the most effective in regard to the purpose and need, and in consideration of the issues.

The sale and accompanying work is designed to accomplish the Forest Health objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work, this project is exempt from appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in **Federal Register**, the Decision Notice for the Colt Project Area may be signed by the Forest Supervisor. This project will not be subject to review under 36 CFR part 217.

Dated: October 20, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-25986 Filed 10-26-92; 8:45 am]

BILLING CODE 3410-11-M

ARMS CONTROL AND DISARMAMENT AGENCY

Announcement of the Hubert H. Humphrey Fellowship Competition for the 1993-94 School Year

The United States Arms Control and Disarmament Agency will conduct a competition in 1993 for one-year Hubert H. Humphrey Fellowships in support of unclassified doctoral dissertation research in arms control and disarmament. Law candidates for the Juris Doctor or any higher degree are also eligible if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for the Ph.D. candidates will be $5000 plus applicable tuition and fees up to a maximum of $3,400. Stipends and tuition for law candidates will be prorated according to the credits given for the research paper. Fellows must be citizens or nationals of the United States and degree candidates at a U.S. university. The application deadline for the awards is March 15, 1993. Awards will be for the twelve month period beginning in September, 1993 or January, 1994. For information and application materials please write: Hubert H. Humphrey Fellowship Program, Operation Analysis, U.S. Arms Control and Disarmament Agency, Washington, DC 20451.

Dated: October 16, 1992.

Nancy M. Dowdy,

Chief Science Advisor.

[FR Doc. 92-25874 Filed 10-26-92; 8:45 am]

BILLING CODE 6820-32-M

Announcement of the William C. Foster Fellows Visiting Scholars Program for the 1993-94 School Year

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition for selection of visiting scholars to participate in ACDA's activities during the 1993-94 academic year.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568) provides that a program for visiting scholars in the field of arms control and disarmament shall be established by the Director in order to obtain the services of scholars from the faculties of recognized institutions of higher learning.

The law states that the purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer. Fellows shall be chosen by a board consisting of the Director, who shall be the chairperson, and all former Directors of the Agency. In honor of the first Director of ACDA, William C. Foster, who served from the inception of ACDA in 1961 to 1969, scholars are known as William C. Foster Fellows.

ACDA began this program by competitively selecting six visiting scholars for the 1984-85 academic year. The competition has continued each subsequent academic year until the present. One-year assignments will begin at a mutually agreeable time between July 1993 and September 1994.

Positions are available in the Bureau of Strategic Nuclear Affairs (SNA), the Bureau of Multilateral Affairs (MA), the Bureau of Verification and Implementation (VI), the Bureau of Nonproliferation Policy (NP), the Office of the Chief Science Advisor (CSA), and the Policy Planning Group (PPG). A brochure is available describing these positions in detail. Evaluation of applicants for appointments to these positions will focus upon the scholars' potential for providing expertise or performing services needed by ACDA, rather than on the scholars' previously displayed interest in arms control. While pursuit of the scholars' own line of research may sometimes be possible, support of such activity is not the purpose of the program.

Visiting scholars will be detailed to ACDA by their universities; the universities will be compensated for the scholars' salaries and benefits in accordance with the Intergovernmental Personnel Act and within Agency limitations. Visiting scholars will also receive reimbursement for travel to and from the Washington, DC area for their one-year assignment and either a per diem allowance during the one-year assignment or relocation costs.

Visiting scholars must be citizens of the United States, on the faculty of a recognized institution of higher learning, and tenured or on a tenure track or equivalent; they also must have served as a permanent career employee of the institution for at least ninety days before selection for the program. ACDA is an equal opportunity employer. Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap that does not interfere with performance of duties. Prior to appointment applicants will be subject to a full-field background security investigation for a Top Secret security clearance, as required by section 45 of the Arms Control and Disarmament Act. Visiting scholars will also be subject to applicable Federal conflict of interest laws and standards of conduct.

To apply, submit a letter indicating the positions in which you are interested and the perspective and expertise that you offer. Include in the letter a curriculum vitae and any other materials, such as letters of reference and samples of published articles (no more than two), that you believe should be considered in the selection process. Please submit twelve copies of each article.

Please send applications, and any requests for additional information, to: Visiting Scholars Program, Operations Analysis, room 5726, U.S. Arms Control and Disarmament Agency, Washington, DC 20451. Or call at (202) 647–4695. The application deadline for assignments for the 1993–1994 academic year is January 31, 1993, subject to extension at ACDA's option. ACDA expects to announce tentative selections in the spring of 1993. Final appointment will not be made until the selectee receives a security clearance and meets all employability requirements.

Dated: October 16, 1992.

Nancy M. Dowdy,

Chief Science Advisor.

[FR Doc. 92–26048 Filed 10–26–92; 8:45 am]

BILLING CODE 6820–32–M

Performance Review Board; Membership

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Arms Control and Disarmament Agency announces the appointment of Performance Review Board members.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Aderholdt, Director of Personnel, U.S. Arms Control and Disarmament Agency, Washington, DC 20451 (202) 647–2034.

The following are the names and present titles of the individuals appointed to the register from which Performance Review Boards will be established by the U.S. Arms Control and Disarmament Agency during the period beginning on the effective date of this notice and ending when a new register is published in approximately one year. Specific Performance Review Boards will be established as needed from this register.

These appointments supersede those in the announcement published at 56 FR 59244 on November 10, 1991.

Name	Title
Stephen Read Hanmer Jr.	Deputy Director.
Mariner G. Cox	Executive Assistant.
Edward Lacey	Deputy Assistant Director, Verification and Implementation Bureau.
O. James Sheaks	Chief, Verification Division, Verification and Implementation Bureau.
Bradley Gordon	Assistant Director, Nonproliferation Policy Bureau.
Norman Wulf	Principal Deputy Assistant Director, Nonproliferation Policy Bureau.
Vincent DeCain	Deputy Assistant Director, Nonproliferation Policy Bureau.
Robert Rochlin	Chief Scientist, Nonproliferation Policy Bureau.
Michael Rosenthal	Chief, International Nuclear Affairs Division, Nonproliferation Policy Bureau.
Robert Summers	Chief, Defense Programs and Analysis Division, Nonproliferation Policy Bureau.
Michael Moodie	Assistant Director, Multilateral Affairs Bureau.
David Clinard	Principal Deputy Assistant Director, Multilateral Affairs Bureau.
Donald Mahley	Associate Assistant Director, Multilateral Affairs Bureau.
William Staples	Chief, Science and Technological Policy Division, Multilateral Affairs Bureau.
Linton Brooks	Assistant Director, Strategic and Nuclear Affairs Bureau.
R. Lucas Fischer	Deputy Assistant Director, Strategic and Nuclear Affairs Bureau.
Stanley Riveles	Chief, Strategic Affairs Division, Strategic and Nuclear Affairs Bureau.
Karin Look	Chief, Theater Affairs Division, Strategic and Nuclear Affairs Bureau.
David Wollan	Chief, Defense and Space Division, Strategic and Nuclear Affairs Bureau.
Cathleen Lawrence	Administrative Director.
Thomas Graham, Jr.	General Counsel.
Mary Elizabeth Hoinkes.	Deputy General Counsel.
Norman Clyne	Special Assistant to the General Counsel.
Richard Holwill	Director of Congressional Affairs.
Joerg Menzel	Principal Deputy of the On-Site Inspection Agency.
Nancy Dowdy	Special Representative for Arms Control and Disarmament Negotiations and Chief Science Advisor.
Alfred Lieberman	Chief, Operations Analysis Group, Office of the Chief Science Advisor.
Michele Markoff	Senior Policy Advisor.

Cathleen Lawrence,

Administrative Director.

[FR Doc. 92–25976 Filed 10–26–92; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651); 80 Stat. 897; 15 CFR part 301, we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–134. *Applicant:* University of California, Lawrence Livermore National Laboratory, 700 East Avenue, P.O. Box 808, Livermore, CA 94550. *Instrument:* ICP Mass Spectrometer, Model ICP–200. *Manufacturer:* Turner Scientific, United Kingdom. *Intended Use:* The instrument will be used to perform rapid, precise and accurate quantitative analysis of trace (parts-per-million) and ultra-trace (sub parts-per-billion) elements and isotopes in a wide variety of materials including natural waters and dissolved sediments and rocks. *Application Received by Commissioner of Customs:* September 2, 1992.

Docket Number: 92–135. *Applicant:* Texas A&M Research Foundation, Box 3578, College Station, TX 77843. *Instrument:* Multi-Sensor Core Logger. *Manufacturer:* GEOTEK, United Kingdom. *Intended Use:* The instrument will be used for computer-controlled, continuous (~0.5 to 1 cm spacing), high-precision measurement and recording of the physical and acoustic properties of the sediments recovered from the seafloor by gravity, piston or box cores. In addition, the instrument will be used to collect data that will be used as a primary component of student M.S. theses and Ph.D. dissertations. This data will also be integrated into the curriculum of several graduate level oceanography classes. *Application Received by Commissioner of Customs:* September 8, 1992.

Docket Number: 92–136. *Applicant:* Department of Transportation, Federal Highway Administration, Pavements Division, HNR–20, 6300 Georgetown Pike, room F–217, McLean, VA 22101–2296. *Instrument:* Gyratory Shear Compactor. *Manufacturer:* MAP, France. *Intended Use:* The instrument will be used to test asphalt paving mixtures which are primarily composed of asphalt, aggregate, and possibly certain modifiers such as polymers. If it is found that the machine can model workability and in-service densification, then it will

be used in various research projects related to the study of densification and rutting. *Application Received by Commissioner of Customs:* September 8, 1992.

Docket Number: 92–137. *Applicant:* Vanderbilt University, School of Medicine, Department of Pharmacology, 23rd Avenue South at Pierce, Nashville, TN 37232–6600. *Instrument:* Hydraulic and Mechanical Microdrive System, Model MO–15M. *Manufacturer:* Narishige Scientific Instrument Laboratory, Japan. *Intended Use:* The instrument will be used for studies of the eggs of fruit flies (Drosophila melanogaster). The instrument will also be used on an individualized basis to teach graduate level and post-doctoral level students techniques useful to their own research and the research projects particular to the lab. *Applicant Received by Commissioner of Customs:* September 8, 1992.

Docket Number: 92–138. *Applicant:* National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. *Instrument:* Electronic Controlled High Intensity Lamp System, Model XF–10. *Manufacturer:* Hi–Tech Scientific Ltd., United Kingdom. *Intended Use:* These are accessories to an existing stopped-flow spectrofluorimeter that are needed in order to improve the fluorescence signal, to reduce the volume needed for experiments, and to allow the instrument to trigger the reaction inside the cells. *Application Received by Commissioner of Customs:* September 11, 1992.

Docket Number: 92–140 *Applicant:* The Lankenau Hospital, 100 Lancaster Avenue West of City Line, Wynnewood, PA 19096. *Instrument:* Electron Microscope, Model JEM–1200EX–II. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the ultrastructure of cultured cells derived from kidney, skeletal and cardiac muscle, adipose tissue and tumors, and tissue obtained from tumors, heart, liver and kidney and muscle. *Application Received by Commissioner of Customs:* September 11, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–26042 Filed 10–26–92; 8:45 am]

BILLING CODE 3510–DS–M

Geisinger Clinic, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92–055. *Applicant:* Geisinger Clinic, Danville, PA 17822. *Instrument:* High Energy Xenon Flashlamp System, Model XF–10. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended use:* See notice at 57 FR 21394, May 20, 1992. *Reasons:* The foreign instrument provides: (1) Wavelength and focusing optics optimized for photolysis; (2) flash duration to 1000 μs; and (3) stored energy to 340J. *Advice submitted by:* National Institutes of Health, July 9, 1992.

Docket number: 92–061. *Applicant:* National Institute of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT, Germany. *Intended use:* See notice at 57 FR 21395, May 20, 1992. *Reasons:* The foreign instrument provides eight adjustable Faraday cups with an internal precision of 0.005 per mil for carbon and 0.02 for xenon. *Advice submitted by:* National Institutes of Health, July 9, 1992.

Docket number: 92–064. *Applicant:* Northwest Missouri State University, Maryville, MO 64468. *Instrument:* Stopped-flow Spectrometer, Model SF–1B. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended use:* See notice at 57 FR 23573, June 4, 1992. *Reasons:* The foreign instrument provides: (1) reaction half-life of 10 ms to minutes; (2) 12 ms deadtime; and (3) output on oscillograph or penrecorder for instructional use in an undergraduate laboratory. *Advice submitted by:* National Institutes of Health, July 9, 1992.

Docket number: 92–072. *Applicant:* Oregon State University, Corvallis, OR 97331–5503. *Instrument:* Deep-Sea Fluorometer, Model Aquatracka Mark III. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended use:* See notice at 57 27214, June 18, 1992. *Reasons:* The foreign instrument provides pressure windows allowing transmission of UV light (<400 nm) and is deployable below 5,000 meters. *Advice received from:* National Oceanic and Atmospheric Administration, July 23, 1992.

The National Institutes of Health and National Oceanic and Atmospheric Administration advise that: (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–26039 Filed 10–26–92; 8:45 am]

BILLING CODE 3510–DS–M

The Pennsylvania State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–086. *Applicant:* The Pennsylvania State University, University Park, PA 16802. *Instrument:* Infrared Radiation Focussing Furnace. *Manufacturer:* Ulvac Sinku-Riko, Inc., Japan. *Intended use:* See notice at 57 FR 30471, July 9, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides gold coated mirrors to achieve temperatures to 1400°C and low thermal mass to follow complex temperature profiles for rate-controlled sintering. The National Institute of Standards and Technology advises that: (1) This capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value

to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-26040 Filed 10-26-92; 8:45 am]

BILLING CODE 3510-DS-M

Pennsylvania State University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Education, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-090. *Applicant:* Pennsylvania State University, Hershey, PA 17033. *Instrument:* Electron Microscope, Model CM-10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Application Received by Commissioner of Customs:* April 30, 1992.

Docket Number: 92-096. *Applicant:* Rutgers, The State University of New Jersey, Camden, NJ 08102. *Instrument:* Electron Microscope, Model EM 902. *Manufacturer:* Carl Zeiss Inc., Germany. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Order Date:* April 22, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-26041 Filed 10-26-92; 8:45 am]

BILLING CODE 3510-DS-M

The University of Texas at Austin; Withdrawal of Application for Duty-Free Entry of Scientific Instruments

The University of Texas at Austin has withdrawn Docket Number 92-071 (see notice at 57 FR 27214), an application for duty-free entry of a Rolling Wheel Compactor for Testing Asphalt Paving Mixtures. We have discontinued processing in accordance with § 301.5(g) of 15 CFR part 301.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-26043 Filed 10-26-92; 8:45 am]

BILLING CODE 3510-DS-M

Washington University School of Medicine, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decisions:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92-015R. *Applicant:* Washington University School of Medicine, St. Louis, MO 63110. *Instrument:* Two (2) Micromanipulators and Mounting Accessories, Models WR-89-L and MM-3-R. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* See notice at 57 FR 9106, March 16, 1992. *Reasons:* The foreign instrument provides a fine adjustment range of 10.0 mm.

Docket Number: 92-068. *Applicant:* Northwestern University Medical School, Chicago, IL 60611. *Instrument:* Multi-electrode Neuronal Recording System. *Manufacturer:* UWE Thomas Recording, Germany. *Intended Use:* See notice at 57 FR 23573, June 4, 1992. *Reasons:* The foreign instrument provides simultaneous recording of up to seven independently positioned microelectrodes.

Docket Number: 92-069. *Applicant:* University of California, Irvine, Irvine, CA 92717. *Instrument:* Electron Paramagnetic Resonance Spectrometer, Model ESP 300E. *Manufacturer:* Bruker, Germany. *Intended Use:* See notice at 57 FR 27214, June 18, 1992. *Reasons:* The foreign instrument provides both electron spin and electron paramagnetic resonance with field frequency lock.

Docket Number: 92-070. *Applicant:* Northwestern University, Chicago, IL 60611. *Instrument:* Kinematic Analysis Instrumentation, Model ELITE 50 Hz. *Manufacturer:* Bioengineering Technology and Systems, Italy. *Intended Use:* See notice at 57 FR 27214, June 18, 1992. *Reasons:* The foreign instrument provides an accuracy of 1.0 mm with a 28 mm field of view and passive (wireless) markers.

The National Institutes of Health advises in its memoranda dated August 14, 1992, that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-26044 Filed 10-26-92; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Atlanta, GA

AGENCY: Minority Business Development Agency; Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is $236,160 in Federal funds and a minimum of $41,675 in non-Federal (cost-sharing) contributions. This federal amount includes $5,760 for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from March 1, 1993 to February 28, 1994. The MBDC will operate in the Atlanta, Georgia geographic service area.

The award number for this MBDC will be 04–10–93003–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000. False information on the application can be grounds for denying or terminating funding.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements, satisfactory to the Department of Commerce, are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Notification must be provided that all non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a pre-condition for receiving Federal grant or cooperative agreement awards.

15 CFR, part 28, is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF–LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for submitting an application is November 30, 1992. Applications must be postmarked on or before November 30, 1992. Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street, NW., suite 1715, Atlanta, Georgia 30308–3516.

A pre-application conference to assist all interested applicants will be held on November 17, 1992, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: Carlton L. Eccles, Regional Director of the Atlanta Regional Office on (404) 730–3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: October 21, 1992.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 92–26014 Filed 10–26–92; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Roger W. Fuller From an Objection by the State of North Carolina

AGENCY: National Oceanic and Atmospheric Administration, DOC.

ACTION: Notice of decision.

On October 2, 1992, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Roger W. Fuller (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit under section 404 of the Clean Water Act to restore to its original dimensions his unimproved lot bordering Boiling Spring Lakes, in Brunswick County, North Carolina. The Appellant's proposed project would involve dredging submerged fill adjacent to the property and filling a section of property containing emergent, freshwater wetlands. In conjunction with the Federal permit application, the Appellant submitted to the Corps for review by the State of North Carolina Department of Natural Resources and Community Development (State), the State's coastal management agency, under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A), a certification that the proposed activity is consistent with the State's federally-approved Coastal Management Program (CMP).

On November 1, 1989, the State objected to the Appellant's consistency certification for the proposed project on the ground that the proposed project is not in accordance with the State's CMP policies and objectives of protecting areas classified as conservation areas and discouraging projects which require the filling or significant permanent alteration of productive freshwater marsh. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131 (1988), the State's consistency objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is either consistency with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II).

Upon consideration of the information submitted by the Appellant, the State and interested Federal agencies, the Secretary made the following findings pursuant to 15 CFR 930.121(b): The proposed dredge and fill activity will cause adverse effects on the resources of the coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest. Accordingly, the proposed project is not consistent with the objectives or purposes of the CZMA. Because the Appellant's proposed project failed to satisfy the requirements of Ground I, the Secretary did not override the State's objection to the Appellant's consistency certification, and consequently, the proposed project may not be permitted by Federal agencies. Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 606–4200.

Dated: October 21, 1992.

Thomas A. Campbell,

General Counsel.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 92–25975 Filed 10–26–92; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for permit; cornish seal sanctuary (P526).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Public Display Permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Cornish Seal Sanctuary, Gweek Nr Helston, Cornwall TR12 6UG, England, United Kingdom.

2. *Type of Permit Requested:* Public Display.

3. *Number and Name of Marine Mammals:* One California sea lion (*Zalophus californianus*).

4. The applicant requests permission to maintain one California sea lion to be obtained from surplus stock being held under the care of the New England Aquarium at the Cape Cod Aquarium, Brewster, Massachusetts. The themes of the education program associated with the seal exhibits include biology, ecology and conservation.

The arrangements and facilities for transporting and maintaining the marine mammal requested in this application will be concluded consistent with requirements established by the U.S. Department of Agriculture under the Animal Welfare Act. The animal will be under the care of a licensed veterinarian at the Cornish Seal Sanctuary.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910, (301) 427–2289; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930, (508) 281–9300.

Dated: October 15, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Services.

[FR Doc. 92–25972 Filed 10–26–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of correction regarding Application for Permit (P77#51).

SUMMARY: This notice revises the first paragraph of a notice previously published in the **Federal Register** October 8, 1992 (57 FR 46375). The first

paragraph is revised to read: Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), and the Conditions hereinafter set out, Scientific Research Permit No. 738 issued to the Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149, on May 16, 1991 (56 FR 23684) has been modified to add aerial surveys and an increased number of takes of those species previously authorized, in order to include all cetaceans which may be sighted during the course of conducting aerial surveys.

Dated: October 15, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–25973 Filed 10–26–92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Co-exclusive Patent Licenses

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of co-exclusive licenses in the United States to practice the invention embodied in U.S. Patent No. 4,714,554 (Serial No. 6–915,797), titled "Cross-Axis Synchronous Flow-Through Coil Planet Centrifuge Free of Rotary Seals: Apparatus and Method for Performing Countercurrent Chromatography," and U.S. Patent No. 5,104,531 (Serial No. 7–742,500), titled "Cross-Axis Synchronous Flow-Through Coil Planet Centrifuge for Large Scale Preparative Countercurrent Chromatography," to Countercurrent Technologies, Inc., having a place of business in Research Triangle Park, NC, and Pharma-Tech Research Corp., having a place of business in Baltimore, MD. The patent rights in these inventions have been assigned to the United States of America.

The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Under U.S. Patent No. 4,714,554, countercurrent chromatography is performed with an apparatus producing a hitherto unused mode of synchronous planetary motion. The axis of rotation remains tangent to the path of revolution about the axis of rotation. By this planetary motion, symmetrically distributed force vectors are created.

U.S. Patent No. 5,104,531 employs a countercurrent chromatography apparatus and method where the column rotates about an axis spaced apart from, parallel to, and in the same radial plane as a radius extending from the central axis of revolution. The apparatus generates a unique force field which enables excellent separation.

The availability of Patent No. 4,714,554 for licensing was published in the **Federal Register**, Vol. 53, No. 67, P. 11541 (April 7, 1988). Patent No. 5,104,531 is a continuation of S.N. 7–304,853, now abandoned, which was announced as available for licensing in the **Federal Register**, Vol. 54, No. 129, p. 28705 (July 7, 1989). A copy of the above-identified patents may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for $3.00 each (payable by check or money order).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated licenses.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92–25971 Filed 10–26–92; 8:45 am]

BILLING CODE 3510-04-M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 407.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive field-of-use license in the United States and certain foreign countries to practice the inventions embodied in U.S. Patent Nos. 4,851,291 (Serial No. 7–055,476), 4,871,615 (Serial No. 6–818,567) and 4,908,238 (Serial No. 7–371,779), and U.S. Patent Application S.N. 6–876,015, each titled "Temperature Adaptable Textile Fibers and Method of Preparing Same," to Wisconsin Global Technologies, Ltd., having a place of business in Black River Falls, WI. The patent rights in these inventions have been assigned in the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present inventions consist of temperature adaptable textile fibers in which phase-change or plastic crystalline materials are filled within hollow fibers or impregnated upon non-hollow fibers. The fibers are produced by applying solutions or melts of the phase-change or plastic crystalline materials to the fibers. Cross-linked polyethylene gylcol is especially effective as the phase change material, and, in addition to providing temperature adaptability, it imparts improved properties as to soil release, durable press, resistance to static charge, abrasion resistance, pilling resistance and water absorbency.

The availability of S.N. 7–055,476 and S.N. 6–818,567 for licensing were published in the **Federal Register** Vol. 55, No. 138, p. 29255 (July 18, 1990). The availability of S.N. 6–876,015 for licensing was published in the **Federal Register**, Vol. 54, No. 63, p. 13549 (April 4, 1989). S.N. 7–371,779 is a division of S.N. 7–055,476.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161. The issued patents are available for $3.00 each (payable by check or money order) from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield,

VA 22151. Properly filed completing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92-25970 Filed 10-26-92; 8:45 am]

BILLING CODE 3410-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

October 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: October 28, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government agreed to increase the current guaranteed access level for Categories 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14388, published on April 20, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 21, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on October 28, 1992, you are directed to amend the April 14, 1992 directive to increase the guaranteed access level for Categories 347/348 to 1,800,000 dozen, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Costa Rica.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-26011 Filed 10-26-92; 8:45 am]

BILLING CODE 3510-DR-F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

October 22, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 29, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 482-3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not yet been held on a mutually satisfactory solution on Categories 351/651, the United States Government has decided to control imports in these categories for the prorated period beginning on May 29, 1992 and extending through December 31, 1992.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of India, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 27030, published on June 17, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 29, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in India and exported during the period beginning on May 29, 1992 and extending through December 31, 1992, in excess of 91,639 dozen [1].

Textile products in Categories 351/651 which have been exported to the United States on and after January 1, 1992 shall remain subject to the Group II limit established for the period January 1, 1992 through December 31, 1992.

[1] The limit has not been adjusted to account for any imports exported after May 28, 1992.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-26038 Filed 10-26-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force; Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on Friday, November 20, 1992, at 8:30 am, in the Martin Hall (Bldg 900) Conference Room, Randolph AFB, Texas. The meeting will be open to the public.

Purpose of the meeting is to review and discuss academic policies and issues relative to operation of the CCAF. Agenda items include a CCAF mission briefing and an update of the faculty credentials issue.

For further information contact Captain Lynmari Tereyla, (205) 953-7937, Community College of the Air Force, Maxwell Air Force Base, Montgomery, Alabama 36112-6655.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-25969 Filed 10-26-92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket Nos. 92-127-NG, 92-128-NG, 92-129-NG]

CanadianOxy Marketing Inc., Canada Imperial Oil Ltd., Murphy Oil Co. Ltd.; Applications for Blanket Authorization to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) given notice that the applications identified in the attached appendix were filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. The applicants request blanket authorization to import and export natural gas from and to Canada on a short-term or spot market basis over a period of two years beginning on the date of the first delivery. The proposed imports and exports would take place at any point on the U.S./Canada border that would not require the construction of new pipeline facilities.

Copies of these applications are available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, at the below address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. You are invited to submit protests, motions to intervene, notices of intervention, and written comments with respect to any docket listed above.

DATES: Protects, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in the specific docket at the address listed below no later than 4:30 p.m., eastern time, November 27, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION: P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4819.

SUPPLEMENTARY INFORMATION: Notice of these applications is consolidated for administrative reasons, but DOE is conducting separate proceedings and will issue individual decisions on each application. Any protestor, intervenor, commenter, or other respondent who wishes to participate in more than one docket must submit a separate filing in each docket. DOE's decision on applications for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose any of these applications, should comment on these issues as they relate to the requested import/export authority. The applicants assert that their proposals are in the public interest. Parties opposing any of these applications bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in these proceedings until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to a proceeding and to have written comments considered as the basis for any decision on an application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to an application will not serve to make the protestant a party to that proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on an application. The filing of an intervention with respect to a particular docket will not serve to make the person a party in any other docket. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed to the specific docket with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on an application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is

material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Issued in Washington, DC, on October 21, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

APPENDIX

Filing date	Applicant name and docket number	Two-year maximum			Comments
		Import volume	Export volume	Import/export volume [1]	
10/07/92	CanadianOxy Marketing Inc. (92-127-NG)	100 Bcf			Imports from Canada.
10/07/92	Canada Imperial Oil Limited (92-128-NG)			146 Bcf	Imports and/or Exports from/to Canada.
10/14/92	Murphy Oil Company Ltd. (92-129-NG)	75 Bcf			Imports from Canada.

[1] Represents combined total of imports and exports.

[FR Doc. 92-26034 Filed 10-26-92; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. PL93-1-000]

Post-Employment Benefits Other Than Pensions; Request for Public Comments

October 21, 1992

I. Introduction

The Federal Energy Regulatory Commission (Commission) is considering the issuance of a policy statement on the appropriate rate and accounting treatment to be accorded companies under its jurisdiction in light of the requirements of the Financial Accounting Standards Board (FASB) Statement No. 206, Employers' Accounting for Post-Retirement Benefits Other Than Pensions (SFAS 106). The Commission requests comments of all interested persons on the attached Petition of the Interstate Natural Gas Association of America (INGAA) for Issuance of Proposed Policy Statement, filed October 16, 1992. Although the petition was filed by INGAA, the subject affects public utilities and potentially oil pipelines subject to the Commission's jurisdiction as well. Therefore, the Commission also requests public comment from interested persons, outside the natural gas industry, on the INGAA petition and on the questions raised by SFAS 106 contained in this Request.

II. Background

SFAS 106 requires that, for fiscal years beginning after December 15, 1992, employers reflect in current expense an accrual for post-retirement benefits other than pensions (OPEBs) during the working lives of covered employees. INGAA asserts that this change in accounting will result in a reduction in income and equity for natural gas pipelines unless a corresponding change in rate-making policy is permitted to allow regulated entities to recover OPEB accruals in rates on a current basis. The general policy of the Commission has been to allow recovery of costs of OPEBs in rates only as monies are actually expended (the so-called "pay-as-you-go" approach). INGAA asserts that one equitable approach to including SFAS 106 accrual amounts in rates currently is to place such amounts in a trust set up to pay the benefits when due. INGAA asserts that pipelines should be permitted to add to their cost of service an amount equal to OPEB-related taxes in a manner similar to that currently used for income taxes. However, INGAA suggests that the Commission instead allow pipelines to treat prepaid deferred taxes resulting from OPEB collections as a component of rate base, thereby allegedly giving the ratepayer the benefit of tax deductions allowed to the pipeline for funding the OPEB trust, but would prevent an economic disadvantage to the pipeline.

It must be emphasized that some or all the assertions of INGAA respecting natural gas pipelines may be applicable to other entities regulated by this Commission. In fact, the Commission has pending before it for review an initial decision by the Administrative Law Judge in New England Power Co., Docket No. ER91-565-000, et. al., that also raises the issues presented by the INGAA petition. The Commission expects to consider a decision in that case concurrently with a generally applicable policy statement in this docket.

III. Request for Specific Comment

The Commission is interested in receiving comments generally on the INGAA Petition. In addition, specific responses to the following questions are requested:

(1) Will the policy statement proposed by INGAA satisfy all current accounting principles regarding deferrals, including SFAS 71? If not, what modifications are needed?

(2) Should any policy statement regarding this matter be made applicable to public utilities and/or oil pipeline companies subject to Commission jurisdiction?

(3) Natural gas pipelines, public utilities and oil pipelines are requested to quantify, the calendar year 1991, the incremental revenue effect, stated in terms of total revenue requirements, of changing from the current method to the SFAS 106 accrual method.

(4) If SFAS 106 accrual amounts are not allowed to be included in rates, natural gas pipelines, public utilities and oil pipelines are requested to quantify the net income effect for calendar year 1991 assuming denial of creation of a "regulatory asset" (i.e., the difference between the SFAS 106 accrual amount and the amounts used for rate purposes), including any indirect effect on cost of capital.

(5) What specific conditions, if any, should be placed on an external funding mechanism (e.g., an irrevocable trust) to ensure that: (1) The most tax effective approach to

funding OPEB is used; (2) the funds are used only for the intended purpose; and (3) any excess funds are refunded to ratepayers upon termination of such mechanism?

IV. Comment Procedure

The Commission invites interested persons to submit comments, data, views and other information concerning the matters set out in this Request for Public Comment. Because SFAS 106 requires that all companies begin recording OPEBs on an accrual basis for fiscal years beginning after December 15, 1992, the Commission has determined to require the filing of the original and 14 copies of such comments to be received by the Commission by 5 p.m. November 12, 1992. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. PL93–1–000.

By direction of the Commission.

Lois D. Cashell,

Secretary.

Policy Statement on Post-Employment Benefits Other than Pensions

Petition of the Interstate Natural Gas Association of America for Issuance of a Policy Statement

Pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, the Interstate Natural Gas Association of America ("INGAA") hereby petitions the Commission to issue a Policy Statement addressing the appropriate rate and accounting treatment of Post-Employment Benefits Other Than Pensions ("OPEBs"). INGAA requests that the Commission notice this petition, and requests that comments be received within fifteen days. In addition, INGAA requests that the Commission issue a final policy, to be effective by December 15, 1992. In support of this Petition INGAA submits the following proposal and rationale.

I. Statement of INGAA's Interest

The Financial Accounting Standards Board ("FASB") has issued its Statement No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, Statement of Financial Accounting Standards No. 106 (Fin. Accounting Standards Bd. 1990) ("SFAS 106"). SFAS 106 will require most companies to reflect in current expense an accrual for OPEBs during the working lives of covered employees. OPEBs are not new costs, and pipelines have been collecting them historically in their rates just as any other prudently incurred cost. Rate-regulated companies, including pipelines, have generally recognized such costs on a "pay-as-you-go" basis, paying actual benefits from company cash as required, and expensing the amount of cash paid out year by year.

SFAS 106 is scheduled to go into effect for fiscal years beginning after December 15, 1992. Therefore, it is important for the Commission to issue a policy statement resolving rate treatment of OPEBs no later than December 15 of this year. Otherwise pipelines may be required to reflect in their financial statements accrued OPEB expenses. This would adversely affect pipelines income and equity. To assist the Commission in taking necessary and timely action on this matter, INGAA requests that the period for filing comments be limited to 15 days.

INGAA is a national non-profit trade association representing virtually all of the major interstate natural gas transmission companies operating in the United States, which account for over 90 percent of all natural gas transported and sold for resale in interstate commerce. INGAA's members also include major Canadian interprovincial pipelines subject to regulation by the National Energy Board of Canada. INGAA's U.S. members are regulated by the Commission pursuant to the Natural Gas Act (15 U.S.C. 717–717w).

Correspondence in regard to this proceeding should be addressed to: John H. Cheatham, III, Interstate Natural Gas Association of America, 555 13th Street NW., Suite 300 West, Washington, DC 20004.

(202) 626–3200

II. The Proposed Policy Statement

INGAA's Proposed Policy Statement contains the following elements:

A. The annual OPEB expense, as determined by the actuaries for each pipeline in accordance with the provisions of SFAS 106, shall be recognized in the determination of rates.

B. Each pipeline shall apply the amounts included in rates each year for OPEB accruals to fund an external trust, or other accounting vehicles as appropriately determined by the appropriate regulatory body, which will be used by pay OPEB benefits when due.

C. Pipelines will use an independent actuarial firm to calculate their annual OPEB expense, and the results of these studies will be provided to the Commission periodically. The actuarial results may be reviewed, and the Commission may adjust future funding to reflect the differences between the amounts included in rates and the amounts placed in an OPEB trust fund.

D. Income taxes resulting from OPEB collections on the non-deductible portion of amounts used to fund OPEB trusts will be treated the same as other income taxes in rate cases.

E. Pipelines are specifically authorized to defer the income effect of OPEBs by offsetting the SFAS 106-required accruals with a regulatory asset between the time of adoption of the new accounting standard and the receipt of Commission approval to recover these costs. Such deferrals of necessary and reasonable expenses shall be recognized in the determination of rates.

F. Pipelines should be allowed to utilize a limited NGA Section 4 proceeding in order to establish recovery for OPEBs.

III. Reasons in Support of Proposed Policy Statement

A. A policy statement is needed to address changes brought about by financial accounting statement no. 106. SFAS 106 requires a change in the way companies account for OPEBs, which are post-employment benefits other than pensions. Although there are a number of possible OPEBs, medical coverage for retirees is nearly always the most significant expense.

Currently, most companies, including pipelines, do not recognize the cost of OPEBs during the working lives of covered employees. The almost universal practice is to pay actual benefits from company cash as required and to expense the amount of cost paid out each year. This practice is known as the "pay-as-you-go" methods, and has been a generally accepted method of accounting for these costs. SFAS 106, however, requires an accrual accounting treatment for OPEBs; that is, companies must begin to reflect in current expenses an accrual for OPEBs during the working lives of their employees.

There is strong theoretical support for accruing OPEB costs during the working careers of employees. At the date of retirement, all the events have occurred which give rise to the company's obligation. This fact, and the current inconsistency between the accounting treatment of pension expense and OPEBs, influenced the FASB to issue the new accounting standard.

This rationale notwithstanding, there is a question of particular concern to pipelines and other regulated entities. Unless such entities are allowed to recover OPEB accruals currently, income and equity will be reduced. Recent statements by the SEC and some

major public accounting firms indicate that specific rate action by the regulator is needed if regulated entities are to avoid adverse financial consequences. To avoid these adverse effects on pipeline income and equity, INGAA urges the Commission to remove regulatory uncertainty regarding rate treatment of OPEBs by issuing a policy statement by December 15, 1992. Given the poor financial health of the interstate natural gas pipeline industry,[1] such action is essential.

B. Funding considerations suggest the use of a trust. By their very nature, OPEBs are long-lived liabilities, extending through the retirement years of all current employees. Further, the future payments of these OPEBs may extend beyond the time in which the companies can recover these prudently incurred costs from the ratepayers who received the benefit of the services of the employees in question. The liability can grow over time to be a significant amount. The estimate of the current accrual is influenced by uncertainty regarding the inflation rate of medical costs, assumptions about trends in medical care use by retirees, and other factors. Accordingly, one equitable approach is to place amounts included in rates for OPEB accruals in a trust set up to pay the benefits when due. Differences between the amounts included in rates and the amounts placed in an OPEB trust fund will be factored into the accrual each year, so an automatic true-up occurs over time within the trust. A trust for OPEB benefits would also allow both the company and the Commission to monitor cost levels as compared to rate recoveries, and would permit the Commission to adjust rates for under-collections or over-collections. Thus, the Commission's charge to protect the ultimate consumer will be satisfied. Under the Proposed Policy Statement, pipelines will use independent actuaries to calculate their annual OPEB accrual, and the results of actuarial studies would be provided to the Commission during rate proceedings and periodic audits by the Office of the Chief Accountant.

C. Current tax regulations do not allow tax-efficient OPEB funding. Current law does not generally allow companies a tax deduction for all amounts funded to OPEB trusts. While certain types of trusts allow for deductions for part of the amounts funded, the availability of these trusts are limited. (I.R.C. sections 401–417 (1992).) The available tax deduction for member companies is expected to range from 25 percent to 75 percent of the total OPEB accrual. This tax treatment, unless addressed by the Commission in its rate recovery policy, would result in a financial loss to pipeline companies. To permit pipelines full recovery of these prudently incurred costs, pipelines should be permitted to add to their cost-of-service an amount equal to OPEB-related taxes in a manner similar to that currently used for other income taxes. However, pipelines will work within IRS regulations to maximize the pool of pre-tax dollars available for OPEB funding purposes. The further alternative would be for pipelines to treat the income taxes resulting from OPEB collections as a component of rate base. Such treatment negatively effects pipeline cash flow.

D. Need for a limited section 4. Pipelines should be able to commence collection of the costs of OPEBs as computed in accordance with SFAS 106 by using a limited § 4 proceeding. While the timing may be adequate to allow some pipelines to file a full § 4 rate case, this option may not be feasible for others. Those pipelines should have the option to file a limited § 4 proceeding in order to begin recovery and funding of OPEB obligations.

IV. Necessity for Prompt Action

There is very little time remaining before pipelines must begin implementing FASB's Standard No. 106. The standard goes into effect at the commencement of each company's fiscal year that begins after December 15, 1992. For many companies, and virtually all pipelines, the standard must be put into effect no later than January 1, 1993, the beginning of their fiscal years. It is therefore essential for the Commission to issue a policy statement along the lines proposed herein by December 15, 1992. In light of the shortness of time for the Commission to finalize a policy statement, INGAA urges the Commission to limit the comment period on the policy statement to 15 days.

Wherefore, for the reasons stated above, INGAA requests that the Commission promptly notice this Petition for Issuance of a Policy Statement, limit the comment period to 15 days, and issue a final policy statement as proposed herein no later than December 15, 1992.

Dated: October 16, 1992.

Respectfully submitted,

John H. Cheatham, III,

Jean E. Sonneman,

Interstate Natural Gas Association of America, 555 13th Street, NW., Suite 300 West, Washington, DC 20004. (202) 626–3200.

[FR Doc. 92–26008 Filed 10–26–92; 8:45 am]

BILLING CODE 6717–01–M

[1] Among other things, the bond ratings of interstate natural gas pipelines are at the lowest possible level above "junk" status. See generally, *Financial Health of the Pipeline Industry*, INGAA, 92–1, March 1992.

[Docket Nos. ER93–21–000, et al.]

Wisconsin Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 20, 1992.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER93–21–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on October 14, 1992, tendered for filing on behalf of itself and Wisconsin Public Service Corporation (Public Service) a Facilities Use Agreement. The Agreement between the two companies provides for the use of certain equipment by Public Service at the Pioneer, Thunder, and White Rapids Substations, as well as the use of certain equipment by Wisconsin Electric at the Badger Substation.

Wisconsin Electric and Public Service respectfully request an effective date of December 14, 1990, in accordance with the terms of the Agreement.

Copies of the filing have been served on the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. System Energy Resources, Inc.

[Docket No. ER93–23–000]

Take notice that on October 13, 1992, System Energy Resources, Inc. (System Energy) filed the unexecuted Second Amendment to the Master Nuclear Decommissioning Trust Fund Agreement (Second Amendment) by and between System Energy and Mellon Bank, N.A., a Pennsylvania banking corporation. The Second Amendment amends the existing Master Nuclear Decommissioning Trust Fund Agreement between System Energy and The Bank of New York, which is on file with the Commission as Supplement No. 19 to System Energy's Unit Power Sale Agreement (UPSA), System Energy Rate Schedule FERC No. 2, by changing the trustee of the fund, in which it accumulates monies collected through its monthly UPSA billings for

the ultimate decommissioning of Grant Gulf Nuclear Station Unit 1. System Energy requests that the Second Amendment be made effective on the date it can be implemented by the affected parties, expected to be on or about January 4, 1993, although no sooner than December 30, 1992. System Energy states that the Second Amendment will have no impact on System Energy's rates under the UPSA, pursuant to which it sells all of the power available to it from Grand Gulf Nuclear Station Unit 1 to Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc.

Comment Date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER93-16-000]

Take notice that on October 13, 1992, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and Cajun Electric Power Cooperative, Inc. FPL requests an effective date of November 1, 1992.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Maine Public Service Company

[Docket No. ER93-17-000]

Take notice that on October 13, 1992, Maine Public Service Company (Maine Public) tendered for filing revisions to its wholesale electric tariff rate 0-1. The revised tariff sheets establish an exit fee in which Maine Public will collect the stranded costs associated with Seabrook Nuclear Generating Station No. 1. The revised tariff sheets also modify the "Availability" provision of the electric tariff rate 0-1 to prevent customers that reduce or terminate purchases from having a right to return to their previous levels of service. The revised tariff sheets will not increase annual revenues under Maine Public's wholesale rates. Maine Public has requested that the rate schedule become effective as of the date of the filing and has requested a waiver pursuant to 18 CFR 35.11.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER93-19-000]

Take notice that on October 14, 1992, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following power exchange agreement (Agreement), which has been executed by Edison and the Tucson Electric Power Company (Tucson) on September 15, 1992: Power Exchange Agreement Between Tucson Electric Power Company and Southern California Edison Company.

The Agreement provides the terms and conditions whereby Edison will furnish Tucson with up to 110 MW of firm system capacity and associated energy during the summer and Tucson shall return energy to Edison during the following winter.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. The Cincinnati Gas & Electric Company

[Docket No. EC92-26-000]

Take notice that on September 24, 1992, an application was filed with the Federal Energy Regulatory Commission, pursuant to section 203 of the Federal Power Act, by The Cincinnati Gas & Electric Company ("Applicant"), a corporation organized under the laws of the State of Ohio and doing business in the State of Ohio, with its principal business office at Cincinnati, Ohio, seeking an order authorizing the purchase by applicant of capital stock of The Union Light, Heat and Power Company ("Union Light"), such capital stock being either certain additional shares to be issued by Union Light or shares outstanding in the hands of minority shareholders. Such authorization would amend the Commission's order issued on August 2, 1968 (Docket No. E-6609), authorizing Applicant to purchase capital stock of Union Light outstanding in the hands of minority shareholders at a price not in excess of $62 per share. Union Light is incorporated under the laws of the Commonwealth of Kentucky and does business in the Commonwealth of Kentucky, with its principal business office at Covington, Kentucky. Applicant owns 485,312-27/94 shares, or 99.99%, of the outstanding Capital Stock of Union Light with the remaining 20-67/94 shares held by one non-associated stockholder.

Applicant, the majority holder of record of Union Light's Capital Stock, per value $15 par share, proposes to purchase up to an additional 200,000 shares of Union Light's Capital Stock, such additional shares to be used by Union Light through one or more offerings through December 31, 1994, with such additional shares to be purchased by Applicant at a price of $150 per share. In addition, Applicant proposes to purchase and acquire the 20-67/94 shares of capital stock of Union Light now held by one non-associated minority shareholder, as may be offered to Applicant for sale from time to time at a price of $150 per share. This price was fixed after consideration of the estimates of current value based on earnings and price-earnings ratios of comparable electric utilities. The proposed issuance of additional shares would result in the outstanding Capital Stock of Union Light being 685,333 shares if all proposed shares are issued.

Applicant states the proposed transactions will have no effect upon any contract for the purchase, sale or interchange of electric energy. Applicant further states that it is necessary for Union Light to issue the additional shares of its Capital Stock to provide funds to repay short-term indebtedness and for other lawful purposes, including the possible refunding of outstanding first mortgage bonds, all required for the proper performance of its services to the public. With respect to shares of Union Light's capital stock in the hands of minority shareholders, Applicant states the requested price of $150 per share is indicative of the current value of Union Light's capital stock, as opposed to the currently authorized price of $62 per share.

Comment date: November 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER92-492-000]

Take notice that Virginia Electric and Power Company (Virginia Power or the Company) on October 8, 1992 tendered an amendment to its filing of a Transmission Service Agreement between Virginia Electric and Power Company and Virginia Municipal Electric Association No. 1 (VMEA).

Copies of the filing were served upon VMEA and the Virginia State Corporation Commission.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Public Service Company

[Docket No. ER92-774-000]

Take notice that on October 9, 1992, Maine Public Service Company (Maine Public), in compliance with its September 17, 1992 pleading herein, tendered for filing corrections to its wholesale electric tariff rate 0-1

originally filed on August 11, 1992 in this docket.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER92-649-000]

Take notice that on September 25, 1992, Northern Indiana Public Service Company (Northern Indiana) tendered for filing Amendment No. 2 to its June 17, 1992 filing in this docket.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corporation

[Docket No. ER92-671-000]

Take notice that on September 28, 1992, Florida Power Corporation (Florida Power) tendered for filing an amendment to its original filing in this docket filed on June 26, 1992.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Tucson Electric Power Company and Century Power Corporation

[Docket Nos. ER93-12-000, ES93-4-000, and EL93-3-000]

Take notice that on October 8, 1992, Tucson Electric Power Company (Tucson) and Century Power Corporation (Century) (collectively Applicants) filed the following: (1) A petition by Century for an order disclaiming jurisdiction to confirm that the transfer of Century's leasehold interests in certain generation facilities is non-jurisdictional; (2) a notice of cancellation by Century of the Amended and Restated Power Sale Agreement between Century and Tucson, dated October 22, 1986, Century Rate Schedule FERC No. 4, together with an agreement between Century and Tucson, terminating that power sale agreement; (3) an application by Century under Section 204 of the Federal Power Act for authorization to issue six promissory notes; (4) the Amended and Restated Interconnection Agreement between Tucson and Century, which is to amend and restate the Interconnection Agreement between Tucson and Century, dated June 1, 1984, Tucson Rate Schedule FERC No. 54 and Century FERC Rate Schedule No. 2 (Century's Certificate of Concurrence); and (5) the Assumption Agreement between Tucson and Century, providing for Century's use of Tucson's interest in a specified step-up transformer and related equipment and facilities at the San Juan Generating Station.

Applicants state that this filing is made in connection with their comprehensive restructuring plans, in which Applicants are restructuring their obligations with each other, certain of their creditors, major suppliers, and lease participants. Applicants state that Tucson has proposed its restructuring plan as an alternative to reorganization under chapter 11 of the Bankruptcy Code, and expects that its restructuring plan will allow it to return gradually to long-term financial viability. Century, against which an involuntary bankruptcy petition is currently pending, also proposes its restructuring plan as an alternative to reorganization under chapter 11.

Applicants state that the closing of the restructuring plans is contingent upon the Commission's approval of those items included in this filing. Applicants believe that it is critical to the success of the restructuring plans that the Commission act upon this filing expeditiously, and accordingly request an order by the Commission approving this filing by November 10, 1992. Tucson and Century state that each component of the filing can only become effective if all components of the filing are approved by the Commission, and only upon the closing of the restructuring plans.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. The Detroit Edison Company

[Docket No. ER92-728-000]

Take notice that The Detroit Edison Company (Detroit Edison) on October 15, 1992, tendered for filing a revised page to an executed service agreement between Detroit Edison and Wolverine Power Supply Cooperative, Inc. for the sale of experimental seasonal peaking capacity and energy.

Detroit Edison requests an effective date of October 1, 1992 for both the service proposed under the rate schedule and the service agreement executed by Wolverine Power Supply Cooperative.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER84-75-015]

Take notice that on October 5, 1992, Southern California Edison Company (SCE) tendered for filing its compliance filing in the above referenced docket.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. The Washington Water Power Company

[Docket No. ER93-15-000]

Take notice that on October 13, 1992, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR part 35, a Capacity and Energy Sale Agreement between The Washington Water Power Company (WWP) and Northern California Power Agency (NCPA). WWP requests that the Commission accept the Agreement for filing, effective December 31, 1992.

A copy of the filing was served upon Northern California Power Agency.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Altamont Cogeneration Corporation

[Docket No. QF90-133-001]

On October 14, 1992, Altamont Cogeneration Corporation (Applicant), filed a petition with the Federal Energy Regulatory Commission for a temporary waiver of the operating and efficiency standards pursuant to section 292.205(c) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The 5.7 MW topping-cycle cogeneration facility which is located in Alameda County, California consists of five Waukesha engine generators. Thermal energy recovered from the facility in the form of exhaust gas, engine jacket cooling water and radiant heat is used in evaporation/crystallization process of brine, a byproduct of oil production. The facility uses natural gas as its primary energy source.

Applicant states that the temporary waiver is requested due to (1) the unexpected delays in construction of equipment associated with evaporation/crystallization process and (2) the limited generation of power without concurrent use of thermal output.

Comment date: Until November 27, 1992.

16. PacifiCorp

[Docket No. ER93-20-000]

Take notice that on October 14, 1992, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Revision No. 18 to Exhibit A and B, Contract No. 14-06-400-2437, Contract for Interconnection and Transmission Service, between PacifiCorp and Western Area Power Administration (Western) (PacifiCorp Rate Schedule FPC No. 45).

Exhibit A specifies the projected maximum integrated demand in kilowatts which PacifiCorp desires to have transmitted to its respective points of delivery by Western. Exhibit B specifies the projected maximum integrated demand in kilowatts which Western desires to have transmitted to its respective points of delivery by PacifiCorp.

PacifiCorp requests an effective date of January 1, 1993 be assigned to Revision No. 18 to Exhibits A and B, this date being consistent with the effective date of the revisions.

Copies of this filing were supplied to Western and the Wyoming Public Service Commission.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corporation

[Docket No. ER93-18-000]

Take notice that on October 13, 1992, Florida Power Corporation (Florida Power) filed a Letter of Commitment for Regulating Interchange Service to the City of St. Cloud. Florida Power requests that the Letter of Commitment be allowed to become effective 60 days from the date of the filing, on December 12, 1992.

Comment date: November 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-25978 Filed 10-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3272-001]

Joseph M. Keating, California; Availability of Environmental Assessment

October 21, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Leggett Project, located on Lee Vining Creek, in Mono County, California, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that denial of the license for the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-26005 Filed 10-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-12-000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP93-12-000]

October 16, 1992.

Take notice that on October 14, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93-12-000 a request pursuant to sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point to accommodate delivery of natural gas to Conoco, Inc. (Conoco), under Tennessee's blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to establish a new delivery point for delivery of natural gas at Platform East Cameron 47J, Offshore Louisiana, for gas lift purposes. Tennessee states that it has entered into an amendment dated September 24, 1992, to an existing gas transportation agreement with Conoco to provide for deliveries at this location of up to 2,000 Dekatherms equivalent per day on an interruptible basis under Tennessee's Rate Schedule IT. Tennessee indicates that the proposal involves the modification of a subsea check valve on the EC Platform 47J. Tennessee explains that the transportation would be performed under its blanket authority issued in Docket No. CP87-115-000, and that the total quantities of gas transported under the agreement would not be affected by this proposal. Tennessee states that Conoco would reimburse the cost of the facilities, estimated to be $46,000.

Comment date: November 30, 1992, in accordance with Standard Paragraph G at the end of the notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP93-15-000]

October 19, 1992.

Take notice that on October 15, 1992, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93-15-000 a request pursuant to sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add four delivery points on an interim basis to an existing transportation agreement between Tennessee and Boston Gas Company (Boston Gas), under its blanket certificate issued in Docket No. CP82-413-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that, pursuant to Boston Gas' request, it has agreed to establish four new delivery points for use on an alternate interim basis only, near Tewksbury, Mendon, Hopkinton, and Worcester, Massachusetts, under the provisions of Tennessee's NET Rate Schedule and the terms and conditions of a firm gas transportation agreement between Tennessee and Boston Gas. Tennessee indicates that the four points are needed for use on an alternate basis until Colonial Gas Company (Colonial) and Commonwealth Gas Company (Commonwealth) execute their NET service agreements pursuant to the terms of certain agreements between Boston Gas, Colonial, Commonwealth and Tennessee dated July 1, 1991.

It is stated that by way of background, on November 14, 1990, the Commission issued Order No. 357 (the Phase I order)

which, among other things, authorized Tennessee to construct facilities to enable it to deliver 17,100 dt equivalent of natural gas per day to Boston Gas at several points. It is also stated that in a subsequent order issued October 9, 1991, (the Phase II order), the Commission authorized a phase-in of the services approved in the Phase I order. Tennessee also notes that subsequent to the Phase I order but prior to the Phase II order, Boston Gas and Tennessee entered into Agreements with Commonwealth and Colonial that provided for the release by Boston Gas of portions of the 17,100 dt equivalent of capacity that it had contracted for as part of Phase I to both Colonial and Commonwealth. It is then stated that Colonial and Commonwealth agreed to contract for 4,000 dt and 4,500 dt equivalent of natural gas per day, respectively, of Boston Gas' capacity, thus reducing Boston Gas' remaining capacity to 8,600 dt equivalent of natural gas per day. Tennessee stated that this swap of capacity was approved in the Phase II order, but under the terms of the July 1 agreements was contingent upon all necessary regulatory approvals being satisfactory to all parties.

It is stated that because all regulatory approvals are not at this time acceptable to either Commonwealth or Colonial, the necessary contracts have not signed and NET service can not commence to Commonwealth and Colonial. Tennessee indicates that Boston Gas has agreed to deliver gas on behalf of Commonwealth and Colonial at their desired delivery points on behalf of Commonwealth and Colonial at their desired delivery points (Hopkinton and Worcester for Commonwealth and Tewksbury and Mendon for Colonial) under its existing NET contract until Colonial and Commonwealth sign their NET service agreements.

Tennessee states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Boston Gas. It is also indicated that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment to Tennessee's other customers.

Comment date: December 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP93-13-000]

October 19, 1992.

Take notice that on October 14, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93-13-000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for deliveries of natural gas for the account of Somerset Gas Service (Somerset), under the blanket certificate issued in Docket No. CP87-115-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it has entered into a gas transportation agreement with Somerset to establish a new delivery point so as to transport up to 10,000 Dekatherms per day of natural gas on an interruptible basis pursuant to Tennessee's Rate Schedule IT.

Tennessee further states that in order to establish this delivery point, Tennessee seeks authorization to install, own, operate and maintain a 4" hot tap assembly at M.P. 871-2+24.65, on its existing right-of-way in Casey County, Kentucky. All costs associated with the construction of the proposed delivery points will be borne by Somerset.

Comment date: December 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Gulf States Transmission Corporation

[Docket No. CP93-7-000]

October 19, 1992.

Take notice that on October 13, 1992, Gulf States Transmission Corporation (GSTC), 1324 North Hearne, suite 300, Shreveport, Louisiana, 71107, filed in Docket No. CP93-7-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate existing facilities on GSTC's system in Harrison County, Texas, as delivery points, under GSTC's blanket certificate issued in Docket No. CP90-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

GSTC proposes to operate the delivery points, formerly used as receipt points, for use in Section 284 transportation services carried out under GSTC's Rate Schedule IT. It is stated that the additional delivery points would add flexibility to GSTC's transportation services and would maximize use of its underutilized system. It is asserted that the proposal involves no construction of facilities. It is further asserted that GSTC does not anticipate any significant impact on its peak day or annual deliveries as a result of the proposal.

Comment date: December 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Michigan Gas Storage Company

[Docket No. CP93-11-000]

October 19, 1992.

Take notice that on October 14, 1992, Michigan Gas Storage Company (Storage Company), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP93-11-000 an application, pursuant to sections 7(c) 7(b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 22 miles 36-inch loop pipeline facilities and the abandonment of 22 miles of 16-inch loop pipeline, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Storage Company requests authorization to construct and operate 22 miles of 36-inch pipeline and related facilities to replace a 16-inch pipeline segment of Storage Company's Line 100 between its Muskegon River Compressor Station located in Clare County, Michigan and the Herrick Road Valve Site, Isabella County, Michigan. Storage Company states that the proposed pipeline replacement is being undertaken to meet the request of a customer, Consumers Power Company (Consumers), and is necessary to increase the capacity of Storage Company's Line 100 to (a) allow Consumers to deliver more gas to Storage Company at the Muskegon River Compressor Station from northern Michigan production areas, and allow Storage Company to transport these additional volumes to Consumer's system in Central and Southern Michigan and (b) allow Storage Company to withdraw and transport larger daily volumes from storage, for Consumer's account, from Storage Company's Winterfield, Cranberry Lake and Riverside Storage Fields.

Storage Company estimates the costs of installing the new line and abandoning the existing line at approximately $20,800,000, to be financed primarily with an estimated $11,000,000 construction and loan agreement with Consumers, the parent company of Storage Company, with the remainder being provided by internal cash generation. Storage Company also states that the construction and operation costs of the 36-inch line will be recovered from Consumers under

Storage Company's Rate Schedule X–1, a cost of service tariff.

Comment date: November 9, 1992, in accordance with Standard Paragraph F at the end of this notice.

6. Florida Gas Transmission Company

[Docket No. CP93–9–000]

October 19, 1992.

Take notice that on October 13, 1992, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–9–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate a delivery point for service to Winnie Pipeline Company (Winnie), an intrastate pipeline company, under FGT's blanket certificate issued in Docket No. CP82–553–000, all as more fully described in the request which is on file with the Commission and open to public inspection.

FGT requests authorization to operate the facilities as a delivery point in addition to operating them as a receipt point, for which purpose they are being installed, also under FGT's blanket certificate authorization, in Jefferson County, Texas. It is stated that FGT would deliver up to 200,000 MMBtu equivalent of natural gas on a daily basis to Winnie and up to 73,000,000 MMBtu equivalent on an annual basis. It is stated that the facilities would also be used for the receipt of 200,000 MMBtu equivalent on a daily basis and 73,000,000 MMBtu equivalent on an annual basis. It is asserted that both receipt and delivery would take place at Winnie's Spindletop Salt Dome Storage Facility and that the end uses would be commercial and industrial. It is stated that the proposed deliveries would have no impact on FGT's peak day and annual deliveries and that FGT can accomplish the deliveries without detriment or disadvantage to its other customers.

Comment date: December 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–25977 Filed 10–26–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC93–2–000]

Florida Gas Transmission Co.; Tariff Sheet Filing

October 21, 1992.

Take notice that on October 15, 1992, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188 Houston, Texas, 77251–1188, filed revised tariff sheets to become effective November 15, 1992, pursuant to 281.204(b)(2) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Tariff Sheets

Sixth Revised Sheet No. 222
Seventh Revised Sheet No. 223
Fifth Revised Sheet No. 224
Seventh Revised Sheet No. 225
Sixth Revised Sheet No. 226
Seventh Revised Sheet No. 227
Seventh Revised Sheet No. 228
Sixth Revised Sheet No. 229
Sixth Revised Sheet No. 230
Fifth Revised Sheet No. 231
Eighth Revised Sheet No. 232
First Revised Sheet No. 233

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before November 2, 1992 file with the Federal Energy Regulatory Commission, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92–26006 Filed 10–26–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RS92–64–000; RS92–88–000]

High Island Offshore System U–T Offshore System; Prefiling Conference

October 21, 1992.

Take notice that a prefiling conference will be convened in this proceedings on December 10, 1992, at 10 a.m., in the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will address the proposals of High Island Offshore System (HIOS) and U–T Offshore System (UTOS) to comply with the Commission's Order Nos. 636 and 636–A. HIOS and UTOS will each provide by November 16, 1992, a revised version of their respective proposals, including pro forma tariff sheets, to facilitate discussions at the December

10th conference. Parties, as defined by 18 CFR 385.102(c), and Commission Staff are invited to attend.

For additional information, contact Thomas J. Burgess at (202) 208–2058.

Lois D. Cashell,

Secretary.

[FR Doc. 92–26007 Filed 10–26–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OAR–FRL–4527–3]

State Implementation Plans for Nonattainment Areas for Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice announcing findings of failure to submit required State implementation plans (SIP's).

SUMMARY: The EPA gives notice that it made a finding, pursuant to section 179(a)(1) of the Clean Air Act (Act), as amended in 1990 (Pub. L. No. 101–549, November 15, 1990), 42 U.S.C. 7509(a)(1), for each State listed in Table A. The EPA has determined that each of these States has failed to submit an implementation plan for sulfur dioxide (SO_2) as required under the provisions of the Act. This notice addresses the requirement under section 191(b) of the Act that any State containing an area designated nonattainment with respect to the primary national ambient air quality standards (NAAQS) for SO_2, but lacking a fully-approved implementation plan complying with the requirements of the Act, shall submit within 18 months of the date of the enactment of the Clean Air Act Amendments of 1990 (Amendments) (i.e., by May 15, 1992), an implementation plan.

This notice announces the findings made in June 1992 via letters sent by the EPA Regional Administrators to three States notifying each of its failure to make a required SO_2 SIP submittal. The letters triggered the 18-month timeclock for the mandatory application of sanctions under section 179(a). Moreover, the letters triggered the timeclock for promulgation of a Federal implementation plan (FIP) under section 110(c)(1).

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Andrew M. Smith, Air Quality Management Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5398. For questions related to a specific area, please contact the appropriate Regional Office listed below.

Regional offices	States
● Marcia Spink, Chief, Air Programs Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–9075.	Pennsylvania, West Virginia.
● Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, 999 18th Street—Suite 500, Denver, CO 80202–2405, (303) 293–1750.	Montana.

SUPPLEMENTARY INFORMATION:

I. Background

Based upon their status immediately before enactment, SO_2 areas were designated nonattainment "by operation of law" upon enactment of the Amendments. These initial nonattainment areas were listed in 40 CFR part 81. States were required to submit implementation plans (section 191(b)) for those initial nonattainment areas for the primary SO_2 NAAQS where those areas lacked fully-approved SIP's, including part D plans. These implementation plans were required to meet the requirements of subparts 1 (nonattainment areas in general) and 5 (requirements specific to SO_2) of part D, and were required to be submitted within 18 months after enactment of the Amendments (i.e., by May 15, 1992).

The Act establishes specific consequences if a State fails to meet certain requirements. Of particular relevance here is section 179 of the Act. Section 179 contains the provisions for mandatory application of sanctions. Section 179(a) sets forth the various findings upon which application of a sanction is based. The finding that a State has failed, for an area designated nonattainment, to submit a plan required under the Act is the finding relevant to this announcement.

Today, EPA is announcing its previous determination that three States have failed to submit a required plan for an SO_2 nonattainment area within the State. Under section 179(a), the Administrator must impose one of the sanctions specified in section 179(b) 18 months after the finding unless EPA determines within that 18-month period that a complete submittal has been made. If the State still has failed to make a complete submittal after 24 months, then EPA must impose both sanctions specified in section 179(b). In addition, a finding of failure to submit would trigger the FIP requirement of section 110(c).

II. States for Which EPA is Making a Finding

Montana

On May 8, 1992, a letter was sent from Ms. Patricia Hull, Region VIII's Air, Radiation, and Toxics Division Director, to Dennis Iverson, Director of the Montana Environmental Sciences Division, explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial SO_2 nonattainment areas by the statutory deadline. On June 16, 1992, EPA initiated this process by notifying the Governor of Montana, pursuant to section 179(a)(1) of the Act, that Montana had failed to submit a SIP to meet the statutory deadline of May 15, 1992 for the East Helena, Lewis and Clark County, SO_2 nonattainment area.

Pennsylvania

On May 6, 1992, a letter was sent from Mr. Thomas J. Maslany, Region III's Air, Radiation, and Toxics Division Director, to Mr. William A. Thompson, Acting Director, Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, explaining the general procedure EPA intended to follow in addressing any State failure to submit a SIP for the initial SO_2 nonattainment areas by the statutory deadline. On June 15, 1992, EPA initiated this process by finding, pursuant to section 179(a)(1) of the Act, that Pennsylvania had failed to submit a SIP to meet the statutory deadline of May 15, 1992 for the Conewango Township, Warren County, SO_2 nonattainment area.

West Virginia

On May 6, 1992, a letter was sent from Mr. Thomas J. Maslany, Region III's Air, Radiation, and Toxics Division Director, to Mr. G. Dale Farley, Director, West Virginia Air Pollution Control Commission, explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial SO_2 nonattainment areas by the statutory deadline. On June 15, 1992, EPA initiated this process by finding, pursuant to section 179(a)(1) of the Act, that West Virginia had failed to submit a SIP to meet the statutory deadline of May 15, 1992 for the New Manchester-Grant Magisterial District, Hancock County, SO_2 nonattainment area.

III. Conclusion

The EPA has made findings under section 179(a)(1) of the Act that the States listed in Table A failed to submit a plan as required under section 191(b) of the Act.

The EPA is not required to go through notice and comment rulemaking under the Administrative Procedure Act (APA) when making findings of failure to submit under section 179(a)(1). Under section 110(k)(1), the Act provides EPA with a 60-day period in which to determine whether a submittal is complete. The EPA makes this completeness determination by letter sent to the State. However, prior to determining whether something is complete, EPA must determine whether the State made a submittal or whether the State failed to submit the required SIP element or elements. Therefore, EPA must make such a determination prior to the time that EPA would be required to determine whether a submittal is complete. Since EPA has less than 60 days to determine whether a State failed to make a required submittal, and it is impossible to provide notice and comment in 60 days, EPA believes that Congress clearly intended that EPA should not go through notice and comment rulemaking prior to making the finding.

In addition, even if EPA's findings of failure to submit were subject to rulemaking procedures under the APA, EPA believes that the good cause exception to the rulemaking requirement applies [APA section 553 (a)(B)]. Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency, for good cause, determines that notice and comment are "impracticable, unnecessary, or contrary to the public interest." In the present circumstance, notice and comment are unnecessary. The finding of failure to submit does not require any judgment on the part of the Agency. The issue is clear in that the Agency must state whether or not it has received any submittal from the State in response to a specific statutory requirement. No substantive review is required for such a determination. If the Agency has received a submittal, it will perform a completeness determination. If the Agency has not received anything, then the State has failed to submit the required rules under section 179(a)(1). The Agency is the only judge of whether or not it has received the submittal. The public does not have access to this information and, therefore, cannot provide relevant comment on whether EPA has received a document from the State. Because there is nothing on which to comment, notice and comment rulemaking are unnecessary.

Authority: 42 U.S.C. 7052, 7509 (a) and (b), 7513, 7513a(a), and 7601.

Dated: October 21, 1992.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

TABLE A.—STATES FOUND TO HAVE FAILED TO SUBMIT SIP'S FOR THE FOLLOWING SO_2 NONATTAINMENT AREAS [1]

State	Area of concern
Montana	East Helena, Lewis and Clark County.
Pennsylvania	Conewango Township, Warren County.
West Virginia	New Manchester-Grant Magisterial District, Hancock County.

[1] For efficiency, the full legal boundaries for the areas addressed in today's notice have not been listed. The references to areas in his notice are general and intended to operate as substitutes for the full legal boundaries. The full length boundaries are set forth in 40 CFR part 81.

[FR Doc. 92-26021 Filed 10-26-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-966-DR]

Florida; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: October 14, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-966-DR), dated October 8, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is amended from October 8, 1992, and continuing to September 24, 1992, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-26017 Filed 10-26-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-951-DR]

Ohio; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 1, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-951-DR), dated August 4, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 1, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-26016 Filed 10-26-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Port of Oakland/American President Lines, Ltd.; Preferential Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002758-012.

Title: Port of Oakland/American President Lines, Ltd. Preferential Assignment Agreement.

Parties:

The Port of Oakland ("Port")
American President Lines, Ltd. ("APL")

Synopsis: The Agreement sets forth specific conditions applicable to the secondary use of the marine terminal facilities, by Orient Overseas Container Line, that is originally assigned to APL.

Dated: October 21, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-25940 Filed 10-26-92; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. P8-92]

The Shipbuilders Council of America—Petition for an Investigation of, and for Section 19 Relief From, Italian Subsidies for Carnival Cruise Line Passenger Vessels; Filing of Petition

Notice is hereby given that the Shipbuilders Council of America ("Petitioner") has filed a petition for investigation into and relief from conditions resulting from subsidies granted by the Government of Italy in connection with the construction of three luxury passenger liners on order at the state-owned shipbuilding conglomerate, Fincantieri, for the Holland-America Line subsidiary of Carnival Cruise Lines ("Carnival"). Petitioner requests relief under section 19(1)(b) of the Merchant Marine Act, 1920 ("section 19"), 46 U.S.C. app. 876(1)(b). Specifically, Petitioner alleges that subsidies create unfavorable conditions which (1) deny oceangoing passenger ship construction work to the unsubsidized shipbuilders of the United States, and (2) significantly contribute to keeping U.S.-flag companies out of the oceangoing passenger liner trade of the United States. Petitioner asks that the Commission impose sanction unless the Italian government agrees to immediately terminate and not institute or reinstate all subsidies associated with the three Carnival ships and any other passenger liner vessels that enter U.S. ports, as well as pay to the U.S. Government the amount of subsidies already dispensed in connection with the Carnival ships. Sanctions recommended by Petitioner include denial of entry into U.S. ports of all ships built in Italian shipyards or registered under the Italian flag, or built in Italian shipyards and owned by Italians wherever registered.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than December 10, 1992. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served on Mr. John Stocker, President, The Shipbuilders Council of America, 4301 N. Fairfax Drive, suite 330, Arlington, Virginia 22203.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., 10th Floor.

Joseph C. Polking,

Secretary.

[FR Doc. 92-26018 Filed 10-26-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Use of Alternative Dispute Resolution

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice of interim policy.

SUMMARY: The Department has developed an interim policy to address the use of alternative dispute resolution (ADR) as required by the Administrative Dispute Resolution Act (ADR Act), Public Law No. 101-552. This interim policy also responds to the Negotiated Rulemaking Act, Public Law No. 101-648, and relevant elements of the Executive Order on Civil Justice Reform (E.O. 12778) . The Department is adopting an interim policy because we need a baseline of experience and knowledge from our own pilot activities and those of other agencies before finalizing a policy.

EFFECTIVE DATE: October 27, 1992.

FOR FURTHER INFORMATION CONTACT: John Settle, HHS Dispute Resolution Specialist, 202-690-7377.

SUPPLEMENTARY INFORMATION: The ADR Act authorizes and encourages agencies to use mediation and other consensual methods of dispute resolution as alternatives to traditional dispute resolution processes. Among other things, the ADR Act requires agencies to designate a dispute resolution specialist, establish a policy addressing use of ADR, and provide for regular training on ADR. The Negotiated Rulemaking Act establishes a framework for use of negotiated rulemaking to increase acceptability and improve the substance of rules. The Executive Order on Civil Justice Reform, among other things, authorizes agencies to consider ADR methods in administrative proceedings and in litigation for which the U.S. Department of Justice has delegated authority.

The basic goals of ADR are to reduce the cost, delay, and contentiousness (including litigiousness) involved in existing mechanisms for dealing with disputes. ADR is not an end in itself; it is a means to accomplishing the public's business more efficiently, economically, and productively.

The Department is the second largest in the Federal government, with many differing functions involving 118,000 employees across the nation. There is wide variation in opportunities and experience in ADR. A few organizations in HHS have considerable ADR experience in specific areas, some are embarking on pilot projects related to particular activities, and many have little or no experience. In this diverse context, it is important to develop a flexible approach to ADR which allows a practical adaptation of mechanisms to program needs. It also is important to recognize that resources are scarce, so we must be innovative and thrifty in our approach. Above all, we intend to use a results-oriented, rather than a process-oriented approach.

Our interim ADR policy is designed to introduce knowledge about ADR widely within the Department, disseminate information about on-going ADR efforts, promote appropriate use of ADR now (including results-oriented and program-specific pilots and experiments), evaluate ADR activities, and display the results across Departmental components for their information and use. Where ADR is already in use, we intend to advertise and evaluate results. In other areas, where ADR is understood but new, we are encouraging pilot projects. In still other areas, we will be providing a basic introduction to ADR and assessing opportunities for its use. These different strategies will produce a baseline of knowledge and experience to support a refined ADR policy. Our interim policy will be reviewed one year after publication.

Under section 3(b) of the ADR Act, the Secretary appointed John Settle as the Department's Dispute Resolution Specialist. In response to the request of the Deputy Secretary, all major components of the Department appointed senior officials as liaisons to the Dispute Resolution Specialist. This group constitutes the primary focal point for encouraging use of ADR and for assessing ADR opportunities in the specific areas listed in section 3(a)(2) of the Act.

The Department already has numerous ADR efforts in operation, in experimental stages, or under development. Among the most prominent of these are the following, which illustrate the breadth of the Department's commitment to ADR:

—An Early Complaints Resolution Process which uses ADR methods, including mediation, for resolving

discrimination complaints related to equal employment opportunity.

—A series of initiatives involving the use of ADR in the Federal labor/management arena. For example, there is an experimental program involving the Department, the National Treasury Employees Union and the Federal Mediation and Conciliation Service (FMCS) which uses mediation for grievances in HHS regional offices. The agreement itself was developed (and will be evaluated) using cooperative techniques. The Social Security Administration (SSA), FMCS and the National Federation of Federal Employees recently signed a similar agreement. SSA's Office of Hearings and Appeals, FMCS and the National Treasury Employees Union also have such an agreement. In addition to grievances, the initiatives cover unfair labor practices, negotiations, and labor/management relations committees.

—Availability, through the Departmental Appeals Board, of mediation and early neutral evaluation (ENE) as an alternative to regular administrative adjudication. An ENE innovation at the Board involves use of an ENE team made up of one Federal and one State or private-sector attorney to assist with case evaluation and resolution.

—A management team which is using "Total Quality Management" principles to explore ways to build on ADR experience in the human resources area for the benefit of other programs of the Department. Under the aegis of this effort, we have developed and used a temporary task team to provide help and advice about ADR opportunities to a specific organization within HHS. The team was made up of HHS personnel with ADR, legal and other expertise relevant to the specific context.

—A pilot project encouraging use of ADR in disputes arising between the Department and States and universities concerning the establishment of indirect cost rates and cost allocation plans under grants.

—A substantial amount of training, both ongoing and under development. This comports with section 3(c) of the ADR Act, which emphasizes the importance of training related to ADR. Included are training in interest-based negotiation and mediation skills; introductory training for selected groups of Departmental managers; more extensive training for contracting officers and managers, and attorneys in the Office of the General Counsel; and program-context ADR training for managers in various components of HHS.

—The recent introduction in the Food and Drug Administration of use of an ombudsman to deal with problems encountered by FDA-regulated organizations.

—An internal ombudsman in the Social Security Administration (SSA) to deal with problems of SSA employees and organizational issues. SSA currently is expanding the program by training a group of employees who perform dispute resolution functions within SSA offices around the nation.

—A pilot project of the HHS Inspector General to use third-party facilitation (ombudsmen or mediators) in certain enforcement programs related to fraud and abuse in the Medicare and Medicaid programs.

—A potential pilot project, now in the exploratory stage, to use ADR in disputes before the Provider Reimbursement Review Board in the Health Care Financing Administration.

—Development of a videotaped introduction to ADR which will be duplicated and distributed widely among field offices.

—Formation of an ADR Committee by the American Association of Public Welfare Attorneys, which includes as members many attorneys from State agencies dealing with public assistance programs, to explore ways to use ADR techniques in Federal/State disputes and in States' own administration of programs. Other organizations have also expressed interest in ADR.

—Exploration of ways of cooperating with the U.S. Department of Labor in its regional ADR pilot program in Philadelphia (see 57 FR 7292). A number of HHS employees participated in recent Labor Department training in ADR in that region. We also are exploring regional training and a possible ADR experiment in HHS's Seattle region.

—Development of a resource team to provide information and support for HHS offices interested in exploring the use of negotiated rulemaking. The team coordinator is Judith Ballard (202–690–7419). The Office of General Counsel and the Assistant Secretary for Planning and Evaluation will assist the team. The Environmental Protection Agency and the Department of Labor, which are more experienced than HHS in dealing with negotiated rulemaking, are providing information and assistance to us. Components of HHS currently are identifying regulations for which experiments in negotiated rulemaking would be appropriate.

—Formation of a work group by the Assistant Secretary for Management and Budget's Office of Acquisition and Grants Management to assess policies on use of ADR related to grant conditions and disputes. This office also has helped lead ADR training for contracts managers, and is involved in overseeing recent provisions of the Federal Acquisition Regulation implementing section 3(d)(2) of the ADR Act.

—Development, with an eye toward ADR-type simplification, of new procedures in the Public Health Service for reviewing cases involving scientific misconduct.

—Development and circulation of a list of employees who are trained and experienced mediators. These employees are available (within the limits of their primary employment) for temporary assignment to assist with disputes elsewhere in the Department. We have also used this mechanism to provide mediators in two cases for the U.S. Department of Education, and we have offered to provide similar assistance for initial cases at the U.S. Department of Labor. In the long run, we hope to be part of an intergovernmental pool of mediators, to reduce costs to participants and offer impartial mediation services among agencies. Section 4(b) of the ADR Act added a provision to the Administrative Procedure Act which specifically encourages such interagency cooperation, as well as use of voluntary services of organizations and individuals.

—Inclusion by the Social Security Administration of an element in its Strategic Priority Transition Guidance providing for consideration of the use of ADR in the Office of Hearings and Appeals, the largest single employer of administrative law judges in the Federal government.

—A newsletter to help Departmental employees interested in ADR keep abreast of current events. The newsletter is distributed widely, including distribution through the electronic network used in HHS's human resource management community.

Anyone interested in the Department's ADR efforts may obtain more information, ask for speakers, or submit comments and suggestions (including comments on this interim policy) by calling or writing the HHS Dispute Resolution Specialist (room 637D, Humphrey Building, Department

of Health and Human Services, Washington, DC 20201; telephone 202–690–7377).

General Policy on ADR

It is Departmental policy to encourage use of alternative dispute resolution processes and mechanisms in any appropriate program setting. ADR initiatives should be implemented consistent with the objectives of reducing costs and delays, improving employee and constituent relations, and improving the efficiency and effectiveness of programs.

Dispute Resolution Specialist and Liaisons; Assessment of ADR Opportunities

Pursuant to section 3(b) of the ADR Act, the Secretary has appointed a Departmental Dispute Resolution Specialist. In response to the request of the Deputy Secretary, all major components of the Department have appointed senior officials as liaisons to the Specialist. This group constitutes the primary focal point for encouraging use of ADR and for assessing ADR opportunities in the specific areas listed in section 3(a)(20 of the ADR Act. These areas include: Formal and informal administrative adjudications; rulemakings; enforcement actions; issuing and revoking licenses or permits; contract and assistance administration; litigation for which HHS has responsibility; and other agency actions.

Two organizations represented in the group of ADR Liaisons have special additional responsibilities. The Assistant Secretary for Management and Budget has an ongoing role in general policy on use of ADR in grants and contracts under section 3(d) of the Act. The Office of the General Counsel will assist generally in assessment of ADR opportunities (including opportunities in administrative litigation); will have a lead role in assessing use of ADR in court litigation where HHS has authority delegated from the U.S. Department of Justice; and will help assess whether we need mechanisms for routine or periodic review of cases for ADR opportunities.

Training, Information Dissemination, and Assessment Assistance

In a setting as large and diverse as this Department, important initial elements of an ADR strategy include educating employees about ADR and providing help in assessing ADR needs.

a. General

To the extent practicable within the limits of resources, it is Departmental policy that all components should support and encourage ongoing training concerning ADR, including, as appropriate to the organization, the following: (a) Introductory training (conducted, where appropriate, as part of other training) to assure that all executives, managers and supervisors known what ADR is, its benefits, and where to go for assistance; (b) more extensive and results-oriented training in ADR for personnel involved in particular areas of disputes and personnel having an identified role in dispute management (e.g., labor/management relations, contract disputes, discrimination complaints, litigation, and administrative adjudication); (c) on-going training in ADR for the ADR liaisons, including how to identify ADR opportunities; and (d) training of ADR facilitators (such as mediators and ombudsmen).

b. Departmental Focal Point for Training and Assessment; Temporary Assistance Teams

The Office of Human Relations (OHR) within the Office of the Assistant Secretary for Personnel Administration has been assigned a primary function of designing and providing (and helping other HHS components design and provide) ADR and negotiation training and services targeted to HHS's human resources community. OHR has experience and expertise and is a Department-wide resource for ADR in areas such as labor/management relations, discrimination complaints, and employee relations.

Under this interim policy, OHR, in consultation with the Department's Dispute Resolution Specialist, also will make its ADR expertise available to any component of HHS which requests advice or assistance (subject to the priority of its primary function). OHR's role will include activities such as providing introductory training in ADR and negotiation skills; advising and assisting HHS components in their development of more intensive ADR and negotiation training; and providing assistance to HHS components in assessing ADR needs, developing their own ADR systems, and evaluating results.

In providing this assistance, OHR may use knowledgeable employees from elsewhere in the Department by, for example, forming temporary teams of employees with ADR and organizational skills appropriate to a particular setting. This will provide the Department with a rapid, low-cost, synergistic and results-oriented tool for sharing expertise and perspectives tailored to a particular need. All HHS components are urged to support their employees' occasional participation on such teams.

HHS components which want OHR's assistance may be asked to fund services which are more than incidental, as well as pay for any training or services using outside consultants. HHS components are encouraged to provide a place in their lists of funding priorities for ADR training and projects.

c. Information Dissemination

HHS's Dispute Resolution Specialist will encourage the widest possible dissemination of information about Departmental initiatives, activities, and training opportunities related to ADR, and about the results of ADR efforts (such as pilot projects).

Negotiated Rulemaking

To date, this Department has virtually no experience with negotiated rulemaking. The Dispute Resolution Specialist will designate a negotiated rulemaking coordinator to work with representatives from the Office of the General Counsel and the Assistant Secretary for Planning and Evaluation to be a resource for advice, assistance, training, and information on negotiated rulemaking. Under this interim policy, the Department encourages experiments using negotiated rulemaking for appropriate regulations or guidelines to assess its utility for Departmental regulation development.

Agency Discretion

Sections 590 and 591 of the Administrative Procedure Act (added respectively, by section 3(a) of the Negotiated Rulemaking Act and section 4(b) of the ADR Act) provide generally that Departmental managers' choices of whether and how to use ADR and negotiated rulemaking are matters committed to their discretion, and are not judicially reviewable.

Confidentiality

Section 4 of the ADR Act grants confidentiality to information provided to a "neutral" or other parties during an ADR proceeding. The U.S. Department of Justice takes the position that any information released during participation in ADR under the Act is protected from disclosure under the Freedom of Information Act.

Consultation

Pursuant to section 3(a) of the ADR Act, the Dispute Resolution Specialist will consult with the Administrative Conference of the U.S. and the Federal Mediation and Conciliation Service

concerning development of HHS's policy on ADR.

Dated: August 7, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

Norval D. (John) Settle,

HHS Dispute Resolution Specialist.

[FR Doc. 92-25944 Filed 10-26-92; 8:45 am]

BILLING CODE 4110-60-M

1993 Cost-of-Living Increase and Other Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) A 3.0 percent cost-of-living increase in Social Security benefits under title II, effective for December 1992;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI for 1993 to $434 for an eligible individual, $652 for an eligible individual with an eligible spouse, and $217 for an essential person;

(3) The average of the total wages for 1991 to be $21,811.60;

(4) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $57,600 for remuneration paid in 1993 and self-employment income earned in taxable years beginning in 1993;

(5) The Hospital Insurance contribution base to be $135,000 for remuneration paid in 1993 and self-employment income earned in taxable years beginning in 1993;

(6) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1993 to be $880 for beneficiaries age 65 through 69 and $640 for beneficiaries under age 65;

(7) The dollar amounts ("bend points") used in the benefit formula for workers who become eligible for benefits in 1993 and in the formula for computing maximum family benefits;

(8) The amount of earnings a person must have to be credited with a quarter of coverage in 1993 to be $590;

(9) The "old-law" contribution and benefit base to be $42,900 for 1993; and

(10) The OASDI fund ratio to be 96.4 percent for 1992.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-3013. A summary of the information in this announcement is available in a recorded message by telephoning (410) 965-3053. This telephone message will be updated to reflect changes to the cost-of-living benefit increase and other determinations.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Social Security Act (the Act) to publish within 45 days after the close of the third calendar quarter of 1992 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1991 (section 215(i)(2)(C)(ii)) and the OASDI fund ratio for 1992 (section 215(i)(2)(C)(ii)). Finally, the Secretary is required to publish on or before November 1 the OASDI contribution and benefit base for 1993 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1993 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1993 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1993 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1993 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The cost-of-living increase is 3.0 percent for benefits under titles II and XVI of the Act.

Under title II, OASDI benefits will increase by 3.0 percent beginning with the December 1992 benefits, which are payable on December 31, 1992. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 3.0 percent effective for payments made for the month of January 1993 but paid on December 31, 1992. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1993 is the same as the title II percentage increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 1992 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is, therefore, required to increase benefits, effective with December 1992, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1992, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1991 through the third quarter of 1992.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1991, was: for July 1991, 134.3; for August 1991, 134.6; and for September 1991, 135.2. The arithmetic mean for this calendar quarter is 134.7 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1992, was: for July 1992, 138.4; for August 1992, 138.8; and for September 1992, 139.1. The arithmetic mean for this calendar quarter is 138.8. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1992, exceeds that for the calendar quarter ending September 30, 1991 by 3.0 percent, a cost-of-living benefit increase of 3.0 percent is effective for benefits under title II of the Act beginning December 1992.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1993, benefits will increase by 3.0 percent beginning with benefits for December 1992 which are payable on December 31, 1992. In the case of first eligibility after 1992, the 3.0 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 3.0 percent the corresponding amounts established by the last cost-of-

living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the OASDI contribution and benefit base for 1992); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1993, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 "years of coverage." To earn a year of coverage for purposes of the special minimum, a person must earn at least a certain proportion (25 percent for years before 1991, and 15 percent for years after 1990) of the "old-law" contribution and benefit base. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 3.0 percent benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1991	Number of years of coverage	Special minimum primary insurance amount payable for Dec. 1992	Special minimum family benefit payable for Dec. 1992
$23.80	11	$24.50	$36.90
47.50	12	48.90	73.80
71.60	13	73.70	111.00
95.50	14	98.30	147.70
119.40	15	122.90	184.40
143.30	16	147.50	221.80
167.20	17	172.20	258.70
191.20	18	196.90	295.60
215.10	19	221.50	332.50
238.90	20	246.00	369.30
263.10	21	270.90	406.60
286.80	22	295.40	443.40
310.90	23	320.20	480.90
334.80	24	344.80	517.70
358.60	25	369.30	554.30
382.80	26	394.20	591.90
406.70	27	418.90	628.70
430.40	28	443.30	665.40

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS—Continued

Special minimum primary insurance amount payable for Dec. 1991	Number of years of coverage	Special minimum primary insurance amount payable for Dec. 1992	Special minimum family benefit payable for Dec. 1992
454.30	29	467.90	702.60
478.20	30	492.50	739.30

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $173.60 for an individual under sections 227 and 228 of the Act is increased by 3.0 percent to obtain the new amount of $178.80. The present monthly benefit amount of $86.90 for a spouse under section 227 is increased by 3.0 percent to $89.50.

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 3.0 percent effective January 1993. Therefore, the yearly Federal SSI benefit amounts of $5,064 for an eligible individual, $7,596 for an eligible individual with an eligible spouse, and $2,532 for an essential person, which became effective January 1992, are increased, effective January 1993, to $5,208, $7,824, and $2,604, respectively, after rounding. The corresponding monthly amounts for 1993 are determined by dividing the yearly amounts by 12, giving $434, $652, and $217, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Averages of the Total Wages for 1991

General

Under various provisions of the Act, several amounts are scheduled to increase automatically for 1993. These include (1) the OASDI contribution and benefit base, (2) the Hospital Insurance (HI) contribution base, (3) the retirement test exempt amounts, (4) the dollar amounts, or "bend points," in the primary insurance amount and maximum family benefit formulas, (5) the amount of earnings required for a worker to be credited with a quarter of coverage, and (6) the "old law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments). These amounts are based on the increase in the average of the total wages.

The Omnibus Budget Reconciliation Act of 1989 required that the OASDI contribution and benefit bases (including the "old law" bases) be increased using a "transitional rule" for years 1990, 1991, and 1992. (The HI contribution base for 1992 was similarly determined as a result of later legislation.) The transitional rule required that a deemed average wage, rather than the average of the total wages, be used in updating these amounts. The transitional rule is no longer in effect and these contribution bases are now based on the increase in the average of the total wages, as noted above. The deemed average wage is no longer needed or determined.

Computation

The determination of the average wage figure for 1991 is based on the 1990 average wage figure of $21,027.98 announced in the **Federal Register** on October 25, 1991 (56 FR 55325), along with the percentage increase in average wages from 1990 to 1991 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include, for the first time, contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from this data were $20,172.11 and $20,923.84 for 1990 and 1991, respectively. To determine an average wage figure for 1991 at a level that is consistent with the series of average wages for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1990 average figure of $21,027.98 by the percentage increase in average wages from 1990 to 1991 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent):

Amount

Average wage for 1991 = $21,027.98 × $20,923.84 ÷ $20,172.11 = $21,811.60. Therefore, the average wage for 1991 is determined to be $21,811.60.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $57,600 for remuneration paid in 1993 and self-employment income

earned in taxable years beginning in 1993.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 1993 is set by statute at 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 1993 is 12.4 percent.

(b) It is the maximum annual amount used in determining a person's OASDI benefits.

Computation

Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the OASDI contribution and benefit base. Under the prescribed formula, the base for 1993 shall be equal to the 1992 base for $55,500 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1991 to (2) the average amount of those wages for calendar year 1990. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1990 was previously determined to be $21,027.98. The average wage for calendar year 1991 has been determined to be $21,811.60, as stated above.

Amount

The ratio of the average wage for 1991, $21,811.60, compared to the average wage for 1990, $21,027.98, is 1.037656. Multiplying the 1992 OASDI contribution and benefit base amount of $55,500 by the ratio of 1.0372656 produces the amount of $57,568.24 which must then be rounded to $57,600. Accordingly, the OASDI contribution and benefit base is determined to be $57,600 for 1993.

Hospital Insurance Contribution Base

General

The HI contribution base is $135,000 for remuneration paid in 1993 and self-employment income earned in taxable years beginning in 1993. The HI base is the maximum annual amount of earnings on which HI taxes are paid. The HI tax rate for remuneration paid in 1993 is set by statute at 1.45 percent for employees and employers, each. The HI tax rate for self-employment income earned in taxable years beginning in 1993 is 2.9 percent.

Computation

The HI contribution base for 1993 shall be equal to the 1992 base of $130,200 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1991 to (2) the average amount of those wages for calendar year 1990. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1990 was previously determined to be $21,027.98. The average wage for calendar year 1991 has been determined to be $21,811.60, as stated above.

Amount

The ratio of the average wage for 1991, $21,811.60, compared to the average wage for 1990, $21,027.98, is 1.0372656. Multiplying the 1992 HI contribution base amount of $130,200 by the ratio of 1.0372656 produces the amount of $135,051.98 which must then be rounded to $135,000. Accordingly, the HI contribution base is determined to be $135,000 for 1993.

Retirement Earnings Test Exempt Amounts

General

Social Security benefits are withheld when a beneficiary under age 70 has earnings in excess of the retirement earnings test exempt amount. A formula for determining the monthly exempt amounts is provided in section 203(f)(8)(B) of the Act. The 1992 monthly exempt amounts were determined by the formula to be $850 for beneficiaries aged 65–69 and $620 for beneficiaries under age 65. Thus, the annual exempt amounts for 1992 were set at $10,200 and $7,440, respectively. For beneficiaries aged 65–69, $1 in benefits is withheld for every $3 of earnings in excess of the annual exempt amount. For beneficiaries under age 65, $1 in benefits is withheld for every $2 of earnings in excess of the annual exempt amount.

Computation

Under the formula provided in section 203(f)(8)(B) of the Act, each monthly exempt amount for 1993 shall be the corresponding 1992 monthly exempt amount multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1991 to (2) the average amount of those wages for calendar year 1990. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

The average wage for 1991, as determined above, is $21,811.60. Therefore, the ratio of the average wages for 1991, $21,811.60, compared to that for 1990, $21,027.98, is 1.0372656.

Exempt Amount for Beneficiaries Aged 65 Through 69

Multiplying the 1992 retirement earnings test monthly exempt amount of $850 by the ratio of 1.0372656 produces the amount of $881.68. This must then be rounded to $880. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $800 for 1993. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $10,560.

Exempt Amount for Beneficiaries Under Age 65

Multiplying the 1992 retirement earnings test monthly exempt amount of $620 by the ratio 1.0372656 produces the amount of $643.10. This must then be rounded to $640. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $640 for 1993. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $7,680.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's "average indexed monthly earnings" to compute the primary insurance amount. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

A worker's earnings are adjusted, or "indexed," to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime. A certain number of years of earnings are needed to compute the average indexed monthly earnings. After the number of years is determined, those years with the highest indexed earnings are chosen, the indexed earnings are summed, and the total amount is divided by the total number of months in those years. The resulting average amount is then

rounded down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 1993, the average of the total wages for 1991, $21,811.60, is divided by the average of the total wages for each year prior to 1991 in which the worker had earnings. The actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, is multiplied by the corresponding ratio to obtain the worker's indexed earnings for each year before 1991. Any earnings in 1991 or later are considered at face value, without indexing. The average indexed monthly earnings is then computed and used to determine the worker's primary insurance amount for 1993.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The dollar amounts in the formula which govern the portions of the average indexed monthly earnings are frequently referred to as the "bend points" of the formula. Thus, the bend points for 1979 were $180 and $1,085.

The bend points for 1993 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the average of the total wages for 1991, $21,811.60, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1993, the ratio is 2.2303527. Multiplying the 1979 amounts of $180 and $1,085 by 2.2303527 produces the amounts of $401.46 and $2,419.93. These must then be rounded to $401 and $2,420, and the amount over $2,420.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1993, or who die in 1993 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $401 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $401 and through $2,420, plus

(c) 15 percent of the average indexed monthly earnings over $2,420.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a final rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The dollar amounts in the formula which govern the portions of the primary insurance amount are frequently referred to as the "bend points" of the family-maximum formula. Thus, the bend points for 1979 were $230, $332, and $433.

The bend points for 1993 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the average of the total wages for 1991, $21,811.60, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1993, the ratio is 2.2303527. Multiplying the amounts of $230, $332, and $433 by 2.2303527 produces the amounts of $512.98, $740.48, and $965.74. These amounts are then rounded to $513, $740, and $966. Accordingly, the portions of the primary insurance amounts to be used in 1993 are determined to be the first $513, the amount between $513 and $740, the amount between $740 and $966, and the amount over $966.

Consequently, for the family of a worker who becomes age 62 or dies in 1993 before age 62, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $513 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $513 through $740, plus

(c) 134 percent of the worker's primary insurance amount over $740 through $966, plus

(d) 175 percent of the worker's primary insurance amount over $966.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Quarter of Coverage Amount

General

The 1993 amount of earnings required for a quarter of coverage is $590. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95–216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year).

Computation

Under the prescribed formula, the quarter of coverage amount for 1993 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1991 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so

determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1991 has been determined to be $21,811.60 as stated above.

Quarter of Coverage Amount

The ratio of the average wage for 1991, $21,811.60, compared to that for 1976, $9,226.48, is 2.3640218. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 2.3640218 produces the amount of $591.01, which must then be rounded to $590. Accordingly, the quarter of coverage amount is determined to be $590 for 1993.

"Old-Law" Contribution and Benefit Base

General

The 1993 "old-law" contribution and benefit base is $42,900. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (equal to 25 percent of the "old-law" base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1992 base multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1991 to (2) the average amount of those wages for calendar year 1990. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1990 was previously determined to be $21,027.98. The average wage for calendar year 1991 has been determined to be $21,811.60, as stated above.

Amount

The ratio of the average wage for 1991, $21,811.60, compared to the average wage for 1990, $21,027.98, is 1.03722656. Multiplying the 1992 "old-law" contribution and benefit base amount of $41,400 by the ratio of 1.0372656 produces the amount of $42,942.80 which must then be rounded to $42,900. Accordingly, the "old-law" contribution and benefit base is determined to be $42,900 for 1993.

OASDI Fund Ratio

General

Section 215(i) of the Act provides for automatic cost-of-living increases in OASDI benefit amounts. This section also includes a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified threshold, the automatic benefit increase is equal to the lesser of (1) the increase in average wage or (2) the increase in prices. The threshold specified for the OASDI fund ratio is 20.0 percent for benefit increases for December of 1989 and later. The law also provides for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases can occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation

Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1992 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1992 to (2) the estimated expenditures of the OASI and DI Trust Fund during 1992, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio

The combined assets of the OASI and DI Trust Funds at the beginning of 1992 equaled $280,747 million, and the expenditures are estimated to be $291,172 million. Thus, the OASDI fund ratio for 1992 is 96.4 percent, which exceeds the applicable threshold of 20.0 percent. Therefore, the stabilizer provision does not affect the benefit increase for December 1992.

Although the OASDI fund ratio exceeds the 32.0-percent threshold for potential "catch-up" benefit increases, no past benefit increase has been reduced under the stabilizer provision. Thus, no "catch-up" benefit increase is required.

(Catalog of Federal Domestic Assistance: Program Nos. 93.800 Medicare-Hospital Insurance; 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.804 Social Security-Special Benefits for Persons Aged 72 and Over; 93.805 Social Security-Survivors Insurance; 93.807 Supplemental Security Income)

Dated: October 20, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 92-25943 Filed 10-26-92; 8:45 am]

BILLING CODE 4190-29-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), November 18, 19 and 20, 1992, National Institutes of Health, Building 2, room 102, Bethesda, Maryland 20892. This meeting will be open to the public on November 18 from 8:50 p.m. to 9:30 p.m., November 19 from 9 a.m. to 12 noon and again from 2 p.m. to 4:30 p.m., and November 20 from 8:30 a.m. to 10 a.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public November 18 from 8:20 p.m. to 8:50 p.m., November 19 from 12 noon to 2 p.m. and again from 4:30 p.m. to recess, and November 20 from 10 a.m. to adjournment for the review, discussion and evaluation of individual intramural

programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A19, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128.

Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.

Dated: October 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

*Certified To Be A True Copy.

[FR Doc. 92–26026 Filed 10–26–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Meeting, Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke, Division of Intramural Research on December 9–11, 1992, Medical Board Room, Building 10, rm. 2C116, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 5 p.m. on December 10th in the Medical Board Room, Building 10, rm. 2C116, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 8 p.m. to 10 p.m. on December 9th and from 9 a.m. until adjournment on December 11th in Building 10, rm. 2N238 for the review, discussion and evaluation of individual programs and projects conducted by the NINDS. The programs and discussions include consideration of personnel qualifications and performances, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Ms. Mary Whitehead, Federal Building, room 1004, 7550 Wisconsin Avenue, Bethesda, MD 20892, telephone (301) 496–9231 or the Executive Secretary, Dr. Irwin J. Kopin, Director, Division of Intramural Research, NINDS, Building 10, room 5N214, National Institutes of Health, Bethesda, MD 20892, telephone (301) 496–4297 will furnish a summary of the meeting and a roster of committee members upon request.

Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research.

Dated: October 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–26025 Filed 10–26–92; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research; Meeting; Nursing Science Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Nursing Science Review Committee, National Center for Nursing Research, November 5–6, 1992, Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on November 5 from 8:30 to 10 a.m. Agenda items to be discussed will include a Report from the Director, NCNR; and an Administrative Report by the Scientific Review Administrator, Nursing Science Review Section. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 5 from 10 a.m. to adjournment on November 6 for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Dr. Mary Stephens, Scientific Review Administrator, Nursing Science Review Section, National Center for Nursing Research, National Institutes of Health, Building 31, room 5B25, Bethesda, Maryland 20892, (301) 496–0472, will provide a summary of the meeting, and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: October 21, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–26027 Filed 10–26–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Inflated Heelsplitter (Potamilus Inflatus) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the inflated heelsplitter (*Potamilus inflatus*). This species occurs in the Amite River, Louisiana, and the Tombigbee and Black Warrior Rivers, Alabama. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before December 28, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Stewart at the above address (601–965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species

program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.C.S. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the inflated heelsplitter, *Potamilus inflatus*. This species occurs in the Amite River, Louisiana, where it is seriously threatened by sand and gravel mining, and in the Tombigbee and Black Warrior Rivers, Alabama, where it is threatened to a limited extent by navigation channel maintenance.

The primary goal of the recovery plan is to recover this species to the point where it can be delisted. The primary threat to this species is in the Amite River and eliminating that threat will bring this species to the brink of recovery.

Recovery efforts will focus on regulating sand and gravel mining and placing dredge disposal in locations that will not adversely impact the species. Recovery tasks include working with regulatory agencies to protect existing populations, conducting life history research, possible restoration of historic habitat and reestablishment of populations, and monitoring of populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 19, 1992.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 92-26002 Filed 10-26-92; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[MT-070-03-4210-04; M74602]

Realty Action; Exchange of Public and State Lands in Park and Beaverhead Counties, MT

AGENCY: Bureau of Land Management, Butte District Office, DOI.

ACTION: Notice.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T 10 S, R 6 W Section 34: S½

Containing 320 acres of public land in Beaverhead County.

In exchange for these lands, the United States will acquire the following described lands from the Montana Department of State Lands:

Principal Meridian Montana

T 11 S, R 6 W, Section 7: SENW

Containing 40 acres of State land in Beaverhead County.

T 9 S, R 8 E, Section 16: Government Lot 9, excepting there from those lands patented to the Northern Pacific Railway Company under State Patent #509, dated July 11, 1904, for the main track of the Park Branch of the Northern Pacific Railroad, which contained 3.10 acres more or less; leaving a net remainder of 16.4 acres, more or less, in Park County.

DATES: Interested parties may submit comments on or before December 11, 1992 to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the Exchange, including the Environmental Assessment, is available for review at the Butte District Office, Box 3388, Butte, MT 59702.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of two years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. The exchange must meet the requirements of 43 CFR 4110.4-2(b).
3. The lands will be exchanged subject to all valid, existing rights (e.g., rights-of-way, easements and leases of record).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated intended time of the exchange is December, 1992. The public interest will be served by completion of this exchange because it will enable the Bureau of Land Management to acquire lands with water resources, will increase management efficiency of public lands in the area, and will allow the National Park Service to incorporate land which is currently owned by the State of Montana into Yellowstone National Park.

Dated: October 15, 1992.

James R. Owings,

District Manager.

[FR Doc. 92-25968 Filed 10-26-92; 8:45 am]

BILLING CODE 4310-DN-M

National Park Service

Steering Committee for the "Protecting Our National Parks" Symposium; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Steering Committee Meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Steering Committee for the "Protecting Our National Parks" Symposium (also entitled, "Our National Parks: Challenges and Strategies for the 21st Century") will be held on Thursday, December 10, 1992 in Washington, DC. The meeting will be held at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC, beginning at 8 a.m. and lasting until approximately 4:45 p.m.

On January 3, 1991, the Symposium Steering Committee was announced in the **Federal Register** as an advisory committee to advise the Director of the National Park Service. Acting under its

Charter, the Steering Committee has planned and conducted the Symposium, which was a cooperative undertaking among the National Park Service and several other entities to focus on National Park System issues and opportunities for improved stewardship. Further background information may be obtained from a notice published in the **Federal Register** on September 19, 1991.

As is indicated in the September 19 notice, the Steering Committee established four "Working Groups" to assemble information and preliminary recommendations on specific issues and to preside over discussion of the issues at a symposium, which was held in Vail, Colorado, October 7–10, 1991. The Closing General Session of the Symposium was open to public participation to allow public comment on the Working Group recommendations as they existed at that time. Based on the symposium discussion, the four Working Groups completed their final recommendations to the Steering Committee. Those final Working Group recommendations were then made available for public review by interested parties as announced in the September 19 notice.

The public review period for the final Working Group recommendations to the Steering Committee ended on December 13, 1991, and the Steering Committee then met on December 17, 1991, to review both the Working Group recommendations and the public comments and formulate its report to the Director. The final report of the Committee was transmitted to the Director on March 25, 1992.

The purpose of the December 10 meeting will be to provide the Steering Committee and interested groups/individuals with an update on what has transpired since the Symposium, including "Team Implement" activities and the "Vail Agenda" Action Plan; and to offer the public an opportunity to address the Steering Committee on issues of concern to them. The December 10 meeting will be held in conformance with the provisions of the Federal Advisory Committee Act, including an opportunity for public comment. The Steering Committee Chairman may, however, restrict the length of public comments as necessary to complete the Committee's agenda by 4:45 p.m. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis.

Persons wishing further information on the meeting may contact the Steering Committee Chairman, Mr. William J. Briggle, Mount Rainier National Park, Pacific Northwest Region, Tahoma Woods, Star Route, Ashford, Washington 98304–9801 (telephone 206–569–2211, extension 2301).

Herbert S. Cables, Jr.,

Deputy Director.

[FR Doc. 92–25949 Filed 10–26–92; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 17, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by November 12, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Graham County

Oak Draw Archeological District, Address Restricted, Safford vicinity, 92001564

Yavapai County

Groom Creek School, Senator Hwy. SE of Prescott, Prescott NF, Prescott vicinity, 92001568

CONNECTICUT

Litchfield County

Forbes, Samuel, Homestead, 89 Lower Rd., North Canaan Township, East Canaan vicinity, 92001578

Windham County

Packerville Bridge, Packerville Rd. over Mill Brook, Plainfield, 92001565

GEORGIA

Turner County

Shingler Heights Historic District, N. Main St. (US 41) between Murray and Hill Aves., Ashburn, 92001571

LOUISIANA

St. John The Baptist Parish

Whitney Plantation Historic District (Louisiana's French Creole Architecture MPS), LA 18 E of Wallace, Wallace vicinity, 92001566

MISSISSIPPI

Warren County

Rose, Adolph, Building (Vicksburg MPS), 717 Clay St., Vicksburg, 92001567

NEBRASKA

Butler County

Upper Oak Creek Descent Ruts of the Woodbury Cutoff, Ox Bow Trail of the California Road, Roughly, 4 mi. SE of Brainard, Brainard vicinity, 92001572

Cheyenne County

Deadwood Draw, NW of Sidney, Sidney vicinity, 92001574

Water Holes Ranch, Roughly, 7.5 mi. W of Gurley, Gurley vicinity, 92001575

Hamilton County

St. Johannes Danske Lutherske Kirke, 2170 N. T Rd., Marquette vicinity, 92001570

Knox County

Niobrara River Bridge, Over the Niobrara R. 1.3 NW of Niobrara, Niobrara vicinity, 92001576

Pierce County

Athletic Park Band Shell, Jct. of Harper and Main Sts., NW corner, Plainview, 92001573

Valley County

Rad Slavin cis. 112 Z. C. B. J. Hall, Address Restricted, Comstock vicinity, 92001569

NEW JERSEY

Morris County

Washington Valley Historic District, Roughly bounded by Schoolhouse, Gaston, Sussex, Kahdena, Mendham, Tingley and Washington Valley, Morristown vicinity, 92001583

NEW YORK

Steuben County

Church of the Redeemer, Jct. of Park and Wall Sts., Addison, 92001577

Sullivan County

Calkins, Ellery, House (Upper Delaware Valley MPS), Co. Rd. 114, E of Delaware R. Bridge, Cochecton, 92001595

Cochecton Presbyterian Church (Upper Delaware Valley MPS), Co. Rd. 114, E of Delaware R. Bridge, Cochecton, 92001597

Cochecton Railroad Station (Upper Delaware Valley MPS), Depot Rd. SE of jct. with Parsonage Rd., Cochecton, 92001596

Drake, Curtis, House (Upper Delaware Valley MPS), Co. Rd. 114, E of NY 97, Cochecton, 92001598

Old Cochecton Cemetery (Upper Delaware Valley MPS), W of NY 97, N of jct. with Co. Rd. 114, Cochecton, 92001593

Page House (Upper Delaware Valley MPS), 59 C. Meyer Rd. Cochecton, 92001601

Parsonage Road Historic District (Upper Delaware Valley MPS), Parsonage Rd., Cochecton, 92001600

Reilly's Store (Upper Delaware Valley MPS), Co. Rd. 114, W of jct. with NY 97, Cochecton, 92001594

Valleau Tavern (Upper Delaware Valley MPS), Jct. of Co. Rd. 114 and NY 97, Cochecton 92001599

NORTH CAROLINA

Vance County

Belvidere, NC 1329, NE end, Williamsboro vicinity, 92001603

Wake County

Grosvenor Gardens Apartments, 1101 Hillsborough St., Raleigh, 92001602

TENNESSEE

Shelby County

Beale Street Historic District (Boundary Increase), Jct. of Beale and 4th Sts., Memphis, 92001581

VIRGINIA

Clarke County

Blandy Experimental Farm Historic District, US 50/17 S side, 4 mi. W of the Shenandoah R., Boyce vicinity, 92001580

Lynchburg Independent City

Miller, Samuel, House, 1433 Nelson Dr., Lynchburg (Independent City), 92001579

WASHINGTON

Clallam County

Beaver School (Rural Public Schools of Washington State MPS), US 101 N, W side, Beaver, 92001591

Columbia County

Guernsey—Sturdevant Building, 225 E. Main St., Dayton, 92001589

King County

Fremont Building, 3419 Fremont Ave. N., Seattle, 92001587

Kittitas County

Chicago, Milwaukee, St. Paul & Pacific RR, Kittitas Depot (Milwaukee Road MPS), Jct. of Railroad Ave. and Main St., Kittitas, 92001582

Shoudy House, 309 W. Fifth Ave., Ellensburg, 92001585

Spokane County

Corbin Park Historic District, Waverly Pl. (W205–733), Park Pl. (W203–738), W. Oval and E. Oval, Spokane, 92001584

Eldridge Building, 1319–1325 W. First Ave., Spokane, 92001588

Stevens County

Loon Lake School (Rural Public Schools in Washington State MPS), 4000 Colville Rd., Loon Lake, 92001592

Walla Walla County

Butler, Norman Francis, House, 207 E. Cherry St., Walla Walla, 92001586

Preston Hall, 600 Main St., Waitsburg, 92001590

[FR Doc. 92–25952 Filed 10–26–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a request from the North Carolina Railroad Company for permission to use certain data from the Commission's 1987, 88, 89, 90 and 91 ICC Waybill Samples.

A copy of the request (WB675—10/8/91) may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–26045 Filed 10–26–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Community Relations Service; Availability of Funding for Special Placement Programs (SPP) for Mariel Cubans Paroled by the Immigration and Naturalization Service (INS) From INS and Bureau of Prisons (BOP) Facilities

AGENCY: Community Relations Service (CRS), DOJ.

ACTION: Notice of availability of funding for cooperative agreements or grants.

SUMMARY: This announcement governs the award of Cooperative Agreements and Grants to public or private non-profit organizations or agencies, and, under certain conditions, to for-profit organizations or agencies, to provide eligible Mariel Cubans paroled from Immigration and Naturalization Service (INS) detention facilities with intensive, structured, and comprehensive residential and community-based follow-up support services. Programs providing such services shall hereafter be referred to as Special Placement Programs (SPPs).

SPPs have the specific goal of assisting eligible clients to attain self-sufficiency and integration into the community through a comprehensive system of support services, delivered first in a residential setting and subsequently in a community setting.

DATE: Closing Date: 5 p.m. Eastern Daylight Time; December 11, 1992.

APPLICATION REQUESTS AND CONTACT PERSON: Eligible applicants may request Proposal Application Packages from the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Attention: Cynthia A. Bowie, Grants Officer.

Proposal Application Packages may also be obtained by contacting CRS at (301) 492–5805, or, 1–800–424–9304.

SUPPLEMENTARY INFORMATION:

Purpose and scope

The purpose of the SPP is the re-integration of certain detained Mariel Cuban ex-offenders into society. This will be accomplished through a structured program of residential and community-based follow-up support services.

The client population consists of Mariel Cubans who have been returned to the custody of the United States Department of Justice, INS from state and local criminal justice systems. Currently, those detainees who are deemed eligible for parole by the INS are primarily detained at the Federal Bureau of Prisons' Terre Haute facility. Potential clients are referred to the Community Relations Service (CRS), Cuban Haitian Entrant Program (CHEP). Cooperative Agreement Recipients (hereafter referred to as Recipients) then receive clients from the available pool of detainees who have been approved for parole by the INS.

SPPs will receive clients directly from INS or BOP detention facilities. CRS has developed a range of services which are intended to respond to those clients who need more services when paroled as well as to those who need less. As such, the length of the residential period at an SPP will fluctuate for each client and will be determined by the individual client's needs and level of functioning.

During the residential period, Recipients provide clients with basic physical care and maintenance, as well as counseling and employment services. In addition, for those clients who require it, English language training, life skills instruction, and other assistance is provided. Upon placement into the community, Recipients provide strong follow-up support services and continued case management for a minimum period of four months. Clients are eligible for limited supplementary services, if required. Services are rendered within the context of a structured, accountable program environment.

Authorization

Authority for CRS' SPP is contained in title V, section 501(c) of Public Law 96–422 (the Refugee Education Assistance Act of 1980).

Available funds

Approximately $4 million will be available on a Fiscal Year basis to support a maximum of four programs. The funding level for each award is anticipated to be between $800,000 and $1,000,000 depending upon the specific

program design and size (20 beds to 40 beds).

Awards normally will not exceed a 36 month program performance period. Funding will be for 12 month budget periods, except for the first budget period which will be for nine months.

The estimated amount of available funds and the anticipated ranges of funding contained in this Notice are intended to serve as bench marks only.

These estimates and ranges do not bind CRS to any specific number of Cooperative Agreements and Grants or to any specific level of funding.

Future fiscal year funding for the SPP will be contingent upon need and Federal appropriations. If adequate funds are available, the Associate Director, Office of Immigration and Refugee Affairs (IRA), anticipates continuation of this program.

Award Instrument

Awards to support SPP services will be in the form of Cooperative Agreements or Grants issued by CRS and will be in accordance with the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224. The administration of Cooperative Agreement awards will require the substantial programmatic involvement of the Federal Government. The level and scope of Federal involvement is delineated in the CRS document entitled, "Special Placement Program-Program Description and Requirements Document." This document is included as part of the Proposal Application Package available from CRS.

CRS will negotiate Cooperative Agreements and Grants with those applicants approved by the Associate Director for Immigration and Refugee Affairs, CRS. Prior to these negotiations, the CRS will also conduct a site visit to the proposed program location to review the Applicant's financial and programmatic management capability.

Eligible Applicants

Non-profit organizations incorporated under State law, which have demonstrated experience in:

(1) The placement of, or provision of services to, Cuban Entrants, or similar populations;

(2) The administration of residential, community-based correctional treatment programs for ex-offenders, or;

(3) The administration of other types of residential, community-based rehabilitative programs are eligible to apply.

For-profit organizations, incorporated under State law, which have demonstrated experience in:

(1) The placement of, or provision of services to, Cuban Entrants, or similar populations;

(2) The administration of residential, community-based correctional treatment programs for ex-offenders, or;

(3) The administration of other types of residential, community-based rehabilitative programs, and which can clearly demonstrate that only costs and not profits, fees, or other elements above costs have been budgeted, are also eligible to apply.

Subcontractual arrangements for the administration of an SPP will only be acceptable in the cases of national-level organizations through local-level agencies which have a demonstrable affiliation with or membership in the national-level organization and which have an institutional presence in the proposed area of resettlement.

Consortiums or joint ventures between or among unrelated agencies or organizations, i.e., those where no formal affiliation or membership relationship exists, will not be considered for funding under the terms of this Notice.

Present CRS grantees are not precluded from submitting new proposals under the terms and conditions of this Notice.

Eligible Client Population

Under the terms of this announcement, the eligible client population consists of Mariel Cuban Entrants who have been approved for parole from Federal detention by the INS and who meet the definition of "Cuban/Haitian Entrant" as specified in title V, section 501(e) of Public Law 96–422:

A. Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the Immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and,

B. Any other national of Cuba or Haiti: 1. Who—a. Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

b. Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

c. Has an application for asylum pending with the INS; and

2. With respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

Further detailed information concerning other characteristics of this population is contained in the "Special Placement Program-Program Description and Requirements Document".

Areas of Placement

Applicants need not be located in the proposed city of placement; however, it is strongly suggested that they have a strong institutional presence or broad support base in this location.

The program site must be within a 70 mile radius of an INS District Office.

Application Contents

Applicants are required to set forth in detail a proposal that meets the program requirements described in this Notice and as supplemented by the "Special Placement Program-Program Description and Requirements Document". Applicants are required to set forth in detail the following:

A. Program Abstract

The Program Abstract is intended to be a brief summary of the proposal, which includes names and locations of relevant agencies, the proposed resettlement city and proposed location of the residential facility, the total number of beds to be provided during the entire program performance period, the proposed program periods and phases, and the services to be offered to clients during these periods and phases.

B. Organization/Agency Background

Applicants must include a detailed discussion of:

1. The applicant's history, philosophy and goals;

2. Its particular demonstrated experience with respect to:

(1) The resettlement of, or provision of services to, Cuban Entrants, or similar populations;

(2) The administration of residential, community-based correctional treatment programs for ex-offenders, or;

(3) The administration of other types of residential, community-based rehabilitative programs; and

3. The applicant's history of service delivery and institutional presence in the proposed city of resettlement.

If the applicant is a national-level organization which proposes to deliver services through a local-level affiliated, the proposed affiliate must be identified. Within the context of the topics outlined above, the application must address the local-level affiliate's qualifications and provide a rationale for its particular selection as their service provider and for the use of such a subcontractual arrangement.

C. Characteristics of Program Site

1. Characteristics of the Proposed Resettlement City

Applications must contain a detailed qualitative and quantitative rationale for the selection of the proposed resettlement city with particular regard to:

a. A description of the city's racial, ethnic and sociocultural composition, including a description of existing Cuban and/or Hispanic populations and Cuban and/or Hispanic organizations;

b. A description of the political and law enforcement structures of the resettlement city and their potential receptivity regarding the program;

c. Current level of employment and unemployment in various relevant local job markets, by race and ethnicity, if possible;

d. Availability of immediate or imminent prospects for full-time, permanent employment consistent with the skills levels of the program participants;

e. Availability of housing which is safe, sanitary, and affordable to the clients; and,

f. A description of the local social service network, specifically including any services targeted primarily to Hispanic populations.

2. Characteristics of the proposed. Placement Community

The 'proposed placement community' refers to the immediate geographical area in which the proposed residential facility is located. This area may be a defined, named neighborhood/area which is recognized as a political unit, or it may be a less formally designated area. In either case, the applicant must describe the relevant area in terms of the following characteristics:

a. Address of the proposed residential facility;

b. A description of the racial, ethnic and sociocultural composition of the community, including the presence of a Cuban community;

c. Identification of important local community groups, such as neighborhood watch associations, tenant organizations, neighborhood task forces;

d. Identification of political representatives who represent the constituency of that area, such as City Council members, Congressional representatives, or local Community Board members;

e. Identification of the local social service and educational network, such as local churches, schools, the Salvation Army, YMCA;

f. Location of nearest police precinct or responsible law enforcement agency; and,

g. Availability of public transportation.

3. Residential/Office Facility

Applicants are required to set forth in detail comprehensive information regarding:

a. A physical description of the proposed facility including the proposed allocation of residential and office space; and

b. Documentation that the facility meets all relevant zoning, licensing, fire, safety and health codes required to operate a residentially-based social service program. Description of facility's proximity to schools. Copies of relevant documents must be submitted at the time of application.

If a properly zoned, licensed, or inspected facility is not available at the time of application, the applicant must submit a report on the progress made in obtaining the appropriate documentation, as noted above. This report must consist of a description of the required documents, copies of correspondence to relevant local officials or offices from which they will be obtained, and the means and time-lines for obtaining the documentation.

4. Community Support

Applicants are required to detail those measures which have been and will be taken to develop and maintain:

a. Community receptivity and support and/or reduce community opposition to the program and its clientele;

b. On-going communication with the relevant INS office and with the relevant law enforcement agency; and

c. An active Advisory Committee for the SPP is mandatory.

Such measures must be supported by appropriate documentation, as outlined in the Application Addenda Material.

D. General Program Design

Applicants are required to set forth in detail a comprehensive narrative which includes:

1. Program Periods

a. An estimate of program start-up time; that is, the period during which the program operations will begin and staff hiring and training will occur, and a description of the activities which will occur during this time;

b. A description of the residential and follow-up program periods, including the services to be rendered in each period;

c. A description of the Recipient's plan for providing individualized services to each client based on the client's level of functioning;

d. A description of the criteria for clients to move from the residential program to the community follow-up period; and

e. A flow chart or time-line which identifies significant milestones during the residential program period.

2. Applicant Organization/Agency Management Plan

Applicants are required to submit a comprehensive plan which outlines the proposed management of the program. The plan must include the following:

a. A comprehensive organizational chart of the applicant organization or agency, which:

(1) Shows the overall lines of authority and responsibility in the organization or agency as a whole;

(2) Shows the relationship of the proposed program to other organizations or agency programs; and

(3) Shows the relationship of the local level affiliate to the national-level organization, if applicable.

b. Identification of the staff member who will assume overall supervision of the program at the applicant organization or agency level.

c. A description of the methods for the administration and supervision of the program by the applicant organization or agency.

d. A description of the plan to ensure communication among the various levels of program administration.

e. For national-level organizations whose local-level affiliates will administer the program, the following material must also be included in the applicant management plan:

(1) A description of the specific services to be rendered by the national level organization to its local-level affiliate;

(2) The specific services to be rendered by the affiliate; and

(3) A monitoring plan.

3. Local-Level Affiliate Management Plan

For national-level organizations whose local-level affiliate will be responsible for the administration and operation of the program, a management plan must also be included which contains the following:

a. A comprehensive organizational chart of the local-level affiliate which:

(1) Shows overall lines of authority and responsibility within the local-level affiliate; and

(2) Shows the relationship of the proposed program to other agency programs.

b. Identification of the local-level affiliate staff member who will assume overall responsibility for the program.

c. A description of the methods for the administration and supervision of the program that identifies all responsible staff members.

4. SPP Staffing Model

This plan refers to the administration, management and staff of the actual SPP. For both the residential and community-based follow-up periods, identify or discuss:

a. The staff member responsible for the overall program management and staff supervision;

b. A plan to ensure intra-program coordination and communication;

c. The staffing pattern, including a comprehensive organizational chart of the proposed program showing lines of authority, responsibility and supervision;

d. A proposed staff schedule;

e. Proposed staff training;

f. The roles of consultants and rationale for their use; and,

g. The role of volunteers.

E. Basic Services—Residential Period

Applicants are required to provide a detailed narrative description of the following services to be rendered and the method of service delivery:

1. Housing;
2. Food Service;
3. Arrival Package;
4. Clothing;
5. Stipends;
6. Medical Services;
7. Transportation, and;
8. Resettlement Package.

F. Residential Program Services

Applicants are required to provide a detailed narrative description of the following services and the method of service delivery, including identification of community resources which will be accessed to provide or to enhance such services.

Client participation in the following services will be mandatory.

1. Orientation to the Program and to the Local Community.

2. Employment Development, Placement and Maintenance Services.

3. Individual Counseling.

4. Substance Abuse Counseling and availability of community detoxification-resources.

5. Community Placement Transition Plan.

Client participation in the following services will be optional for those clients who do not require intensive program services and mandatory for those clients who require a more structured program.

1. English Language Training.

2. Life Skills Instruction.

3. Assistance in Obtaining Documents, i.e., Social Security cards and new I–94 cards.

4. Recreational Services.

G. Community-Based Follow-up Services

The community follow-up period will be for a minimum of four months and can be extended up to eight months at the discretion of the Program Director.

Applicants are required to provide a detailed narrative description of the services to be rendered and the method of service delivery, including the frequency with which services will be rendered:

1. Supplementary Services and Relapse Assistance; and,

2. Comprehensive Individualized Program Services:

a. Individual Counseling;
b. Substance Abuse Counseling;
c. Information and Referral Services;
d. Job Development, Placement, and Counseling Services;
e. Comprehensive Crisis Intervention Services; and
f. A Comprehensive Discharge Plan.

H. Program Records and Accountability

Applicants are required to set forth a detailed narrative describing the following:

1. Internal administrative controls, such as minutes of weekly staff meetings, in-house client meetings, program policies and procedures;

2. Administration program records such as cash disbursement records, inventory lists, medication dispensing records, food allocation, and similar files;

3. Methods for ensuring 24 hour monitoring of the program and its clients, such as sign-in/sign-out sheets, daily logs and pass system;

4. The reward/sanction system;

5. Disciplinary and grievance procedures;

6. Room search and pat-down procedures and frequency; and

7. A plan for testing for substance abuse

I. Case Management System and Client Records, including:

1. A description of the case management system for tracking and monitoring client progress;

2. A description of individual client service plans, including times lines for routine review and revision of plans; and

3. A description of the client case files, i.e., types of records to be maintained.

J. Program Evaluation

Applicants must set forth a plan for program evaluation which includes, at minimum, data pertaining to and an assessment of:

1. Achievement of overall stated goals and objectives of the program;

2. Client statistics, including number completing program, parole revocations, AWOL cases, serious incidents, and arrests;

3. Major program components, particularly employment;

4. Factors contributing to or inhibiting successful delivery of services; and

5. The program relationship with the local community.

K. Budget and Budget Narrative

1. A Proposed Budget

Detailed information concerning budget categories is contained in the "Special Placement Program-Program Description and Requirements Document". The following budget structure should be used to provide appropriate costs breakdowns:

a. Personnel;
b. Fringe Benefits;
c. Travel Costs;
d. Equipment, including computer hardware and software;
e. Supplies;
f. Contractual Obligations;
g. Rearrangement and Alteration Costs (if applicable);
h. Direct Client Costs;
i. Other; and
j. Indirect Costs.

2. Budget Narrative

A narrative explanation for each line item in each budget category must accompany the proposed budget.

L. Application Addenda Material

Applicants are required to submit the following material as an addendum to the program proposal. This material is required for all participating agencies, i.e., applicant organizations as well as local-level affiliates, as applicable:

1. Organization/Agency Administration

a. A copy of the Organization/Agency's Articles Incorporation.

b. A copy of the document verifying IRS status as a non-profit organization/agency, if applicable.

c. A list of officers and board members, if applicable.

d. A list of professional affiliations and certifications.

2. Organizational/Agency Standards and Policies

a. Personnel handbook and statement of standards of conduct.

b. Statement regarding professional and agency liability insurance.

c. Copy of policy regarding confidentiality of client information and records.

3. Staff

a. Position descriptions and resumes, if individuals have been identified for certain positions, for all personnel to be hired for both the residential and community-based follow-up periods, and of individuals responsible for administering the program from the applicant organization and local-level affiliate, as applicable.

b. Resumes of program consultants.

4. Community Support

a. Letters of program support. Sources must be located in, or representative of, the proposed placement community, i.e., the immediate geographic area in which the proposed facility is located. Appropriate sources include, but are limited to, local political representatives, law enforcement officials, community leaders, social service agencies' representatives, merchants, and potential employers; and

b. A proposed list of Advisory Committee members.

Applicants may also submit letters from other sources as supplemental material to the site-specific letters of support.

c. Letters showing that the relevant INS District Office and the relevant law enforcement agency have been notified of the program's purpose and intent.

d. A list of voluntary or donated resources, including letters of intent from agencies or entities providing the resources.

5. Finance and Budget

The following financial information must be submitted:

a. A description of the financial management system of the applicant and local-level affiliate, as applicable;

b. A copy of the latest financial audit of the applicant and local-level affiliate, as applicable; and,

c. A listing of other Federal, state, local or foundation grants or contracts administered by the applicant and local-level affiliate, as applicable. This material should include information regarding the funding source, grant or contract number, level of financial support, purpose of grant or contract, grant or contract performance period, and name, address, and telephone number of the grant or contract officer from the relevant agency.

6. Subcontracts

Subcontracts refer to those procurement arrangements that will be entered into by the Recipient for the delivery of certain goods or services, such as food catering or alterations, which will not be provided directly by the program. Subcontractors are subject to all of the same guidelines and policies as is the Recipient.

a. Identify all proposed services that are to be provided through subcontractors.

b. Provide relevant background material regarding the proposed subcontractors.

c. Provide letters from the proposed subcontractors indicating their commitment and the specific goods and services to be provided.

Application Screening Criteria

CRS will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete and from an eligible applicant to warrant consideration and review by the independent CRS Review Panel.

An application may be rejected if:

A. The application is from an ineligible applicant or, in the case of national-level organization, the applicant or its local-level affiliate does not meet the eligibility criteria contained in this notice.

B. The application is received after the stated closing time and is late.

C. The application omits:

1. Relevant documentation regarding the proposed residential/office facility;

2. Documented written evidence of community support for the program;

3. A comprehensive line item budget with appropriate narrative description; and,

4. A copy of the latest financial audit of the applicant and of the local-level affiliate, if the applicant is a national-level organization.

Criteria for Evaluation of SPP Applications

SPP applications for each Level will be competitively reviewed, evaluated and ranked by an independent review panel, according to the following weighted criteria:

A. The qualifications of the applicant organization or agency, and the local-level affiliate, if applicable, with respect to: 1. Demonstrated experience in:

(1) The placement of or provision of services to Entrants or similar populations;

(2) The administration of residential, community-based programs for ex-offenders; or,

(3) The administration of other types of residential, community-based programs for ex-offenders; or,

(4) The administration of other types of residential, community-based rehabilitative programs; and

2. Demonstrated capacity for effective programmatic and fiscal management and accountability. (10 Points)

B. The rationale for the proposed program location as evidenced by:

1. The quantitative and qualitative descriptions of the characteristics of the proposed placement city and proposed placement community;

2. The institutional presence or broad support base of the applicant agency, or, the presence of a local-level affiliate in the proposed placement city; and,

3. Documentation of community support and plan for an advisory committee. (10 Points)

C. The availability of a suitable residential/office facility and submission or required documentation regarding facility compliance with applicable health, safety, licensing, and zoning regulations or requirements. (15 Points)

D. The adequacy of the overall general program design in terms of:

1. Proposed phase and period activities, time-lines, and services, and criteria for entering various program phases and periods;

2. Proposed plans for overall agency management and program management, including clear organizational charts reflecting lines of authority and responsibility; and,

3. Staff qualifications, staffing patterns, and proposed staff training. (15 Points)

E. The capacity for providing required program services, as demonstrated by:

1. The program plan to provide basic services during all periods and phases of the program;

2. An integrated program plan to provide all program services during the residential and community follow-up periods, particularly with regard to providing a Substance Abuse program and a program for providing full-time, permanent employment for clients; and,

3. Sensitivity to the issues of culture, race, ethnicity and native language and sue of resources which promote and foster cultural identification and mutual support. (15 Points)

F. The degree to which the applicant provides for effective program structure and accountability as demonstrated by administrative and programmatic

controls, as well as program and client records and reports. (10 Points)

G. The reasonableness of the proposed budget and detailed budget narrative. (10 Points)

H. The adequacy of the program evaluation plan. (5 Points)

I. The submission of the requested Application Addenda Material. (10 Points)

Proposal Review:

Proposals will be reviewed, evaluated, and competitively ranked by an independent review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Associated Director for Immigration and Refugee Affairs, CRS. Awards will be subject to the availability of funds.

Processing Time

CRS expects that all eligible submissions will be reviewed and rated within 45 days of the closing date.

Application Submissions

Applicants must submit a signed original and two copies of the proposal and supporting documentation to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Attention: Cynthia A. Bowie, Grants Officer.

Applications Delivered by Mail

An applicant must show proof of mailing consisting of the following:

1. A legible dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

If an application is sent through the U.S. Postal Service, CRS does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local Post Office.

Applicants are encouraged to use registered or at least First Class mail. Each late applicant will be notified that the application will not be considered.

Applications postmarked on or before 5 p.m. (Eastern Daylight Time), December 11, 1992, shall be considered as timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

The Grants Management Office will accept hand delivered applications between 9 a.m. and 5 p.m., Eastern Daylight Time, daily, except Saturdays, Sunday, and Federal holidays.

An application that is hand delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Public Program Orientation Meeting for Prospective Applicants

CRS will hold a public program orientation meeting for prospective applicants in regard to this Notice. Information regarding the time, date, and location of the meeting(s) will be included in the Proposal Application Package.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

Any costs incurred by an applicant prior to an award being made are incurred solely at the applicant's own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Justice to cover pre-award costs.

No Obligation for Future Funding

If an application is selected for funding, the Department of Justice has no obligation to provide any additional future funding beyond the first budget period. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Justice.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full;

(2) A negotiated repayment schedule is established and at least one payment is received; or,

(3) Other arrangements satisfactory to the Department of Justice are made.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Primary Applicant Certification

All primary applicants must submit a completed OJP Form-4061–6, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying":

A. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

B. Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

C. Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000;

D. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower-Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower-tier covered transactions at any tier under the award to submit, if applicable, a completed OJP Form 4061–6, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower-Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." OJP Form 4061–6 is intended for the use of Recipients and should not be transmitted to the Department of Justice. SF–LLL submitted by any tier recipient

or subrecipient should be submitted to the Department of Justice in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Disclosure of Federal Participation

Grantees and subgrantees receiving Federal funds must ahere to the requirements of 8136 of the Department of Defense Appropriation Act (Steven's Amendment of October 1, 1988). The Steven's Amendment requires grantees and subgrantees to clearly state in writing, during time of application submission: (1) The percentage of the total cost of the program or project which will be financed with Federal money; and (2) The dollar amount of Federal funds for the project or program. All grantees and subgrantees shall make this statement when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

Federal Policies and Procedures

Recipients and subrecipients are subject to all applicable Federal laws and Federal, Department of Justice, and CRS policies, regulations, and procedures applicable to Federal financial assistance awards.

Catalogue of Federal Domestic Assistance Number: 16.201.

Date: October 21, 1992.

William Lucas,

Acting Director.

[FR Doc. 92-26023 Filed 10-26-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 14, 1992, two proposed Consent Decrees in *United States* versus *Allied Corporation, Facet Enterprises, Inc., and Westinghouse Electric Corporation,* Civil Action No. 91-CV-6148T, were lodged with the United States District Court for the Western District of New York resolving the matter. The proposed Consent Decrees concern the recovery of past costs and certain future costs incurred and to be incurred by the United States Environmental Protection Agency ("EPA") in response to the existence of hazardous substances at the Kentucky Avenue Wellfield Superfund Site located in Chemung County, New York, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

Under the terms of the Consent Decrees, the defendants will reimburse the United States for $5,000,000 in past costs and certain future costs related to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Allied Corporation,* Facet Enterprises, Inc., and Westinghouse Electric Corporation, D.J. Ref. 90-11-2-484.

The proposed Consent Decrees may be examined at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; the Office of the United States Attorney, Federal Building, room 620, 100 State Street, Rochester, New York; and at the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20044, (202) 347-2072. Copies of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $11.25 (25 cents per page reproduction cost) made payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-25957 Filed 10-26-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Cape Coral,* Civil Action No. 91-59-CIV-FTM-15D, was lodged on October 13, 1992 with the United States District Court for Middle District of Florida. The proposed consent decree would resolve a Clean Water Act civil action filed by the United States on March 15, 1991, at the request of the Environmental Protection Agency, against the City of Cape Coral, Florida and the State of Florida. The suit alleged violations by the City of the Act and the terms and conditions of the City's National Pollutant Discharge Elimination System ("NPDES") Permit, resulting from discharges from the City's publicly-owned treatment works ("POTW") into the Caloosahatchee River. In particular, the Complaint alleged that the City violated section 301 of the Act, 33 U.S.C. 1311, by (1) failing to comply with a "cease discharge" requirement contained in its 1991 NPDES permit; (2) exceeding its 1986 NPDES permit effluent limitations for Total Phosphorus and Total Nitrogen from 1986 through July 1990; and (3) failing to comply with the terms of three Administrative Orders issued by EPA under section 309 of the Clean Water Act, 33 U.S.C. 1319.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Cape Coral,* DOJ Ref. #90-5-1-1-3357.

The proposed consent decree may be examined at the Office of the United States Attorney, 500 Zack Street, suite 400 Tampa, Florida 33602; at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia; and at the Consent Decree Library, 601 Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-25956 Filed 10-26-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Federal Water Pollution Control Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 15, 1992, a proposed Consent Decree in *United States* v. *Crown Cork de Puerto Rico, Inc.,* No. 88-0920 GG, was lodged with the United States District Court for the District of Puerto Rico. The complaint in this action was filed against Crown Cork de Puerto Rico, Inc. ("Crown

Cork") on November 22, 1988 pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.* (the "Act"). The complaint alleged that Crown Cork, a can manufacturer located in Carolina, Puerto Rico, had violated the Act by, *inter alia*, (1) discharging pollutants into the navigable waters of the United States without a National Pollution Discharge Elimination System ("NPDES") permit, (2) discharging pollutants into the navigable waters of the United States in excess of the effluent limitations in its NPDES Permit, and (3) discharging pollutants into the Publicly Owned Treatment Works ("POTW") located in Carolina, Puerto Rico in excess of the limitations set forth in the applicable pretreatment standards.

The proposed Consent Decree will require Crown Cork to pay a civil penalty to the United States in the amount of $750,000. In addition, the proposed Decree has injunctive relief that will require Crown Cork to, *inter alia*, (1) attain compliance with the categorical pretreatment standards for discharges to the Carolina POTW by the effective date of the Decree, (2) attain compliance with the Puerto Rico Aqueduct and Sewer Authority ("PRASA") standard for discharges to the Carolina POTW of 2.5 mg/1 daily maximum for aluminum (or any such revised standard as proposed by PRASA and approved by EPA) by June 1, 1993, and (3) perform whatever best management practices are necessary in its storm waste drainage areas to attain compliance with the effluent limitations set forth in its NPDES permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Crown Cork de Puerto Rico, Inc.*, DOJ No. 90–5–2–1–3202.

The proposed Consent Decree may be examined at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278 (George Shanahan: 212–264–5342); at the office of the United States Attorney, District of Puerto Rico, Federal Building, room 452, Carlos Chandon Avenue, Hato Rey, Puerto Rico, 00918 (Silvia Carreno-Coll: 809–766–5656); and at the Consent Decree Library, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (202–347–2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 made payable to Consent Decree Library (25 cents per page reproduction cost).

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–25955 Filed 10–26–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 8, 1992, a proposed Consent Decree in *United States* v. *Kimmins Environmental Services, Inc.*, Civil Action No. 89–1167–CIV–13C was lodged with the United States District Court for the Middle District of Florida.

The Complaint, brought pursuant to section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b), alleges violations of notice requirements under 40 CFR 61.146(b)(1) (failure to give written notice prior to the commencement of demolition activities) and violations of work practice standards set forth in the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated under sections 112 and 114 of the Act, 42 U.S.C. 7412 and 7414, codified at 40 CFR part 61, subpart M. The particular work practice violations were defendant's failure to keep asbestos wet during stripping activities, as required under 40 CFR 61.147(d), failure to ensure friable asbestos materials remained adequately wet until collected for disposal, as required under 40 CFR 61.147(e), and failure to dispose of the asbestos consistent with 40 CFR 61.152.

Pursuant to this settlement, Kimmins agrees to pay to the United States a civil penalty of $25,000. The settlement also contains injunctive relief, imposing substantial and specific procedures on the defendant's business operations which are intended to ensure proper notice to EPA and local authorities of any future possible renovation or demolition activity covered by the statute in which the defendant may be involved and also to institutionalize basic improvements in the company's NESHAP training and supervision program. These procedures include: (1) implementation of an Asbestos Control Program (the "Kimmins Abatement Corporation Safety Program") which details the procedures that Kimmins will use to ensure that the company's renovation and demolition activities comply with the asbestos NESHAPs, 40 CFR part 61, subpart M and (2) implementation of an Asbestos Training Program for all of the company's employees who are engaged in actual asbestos removal, handling, transportation and disposal activities (to include all foremen/supervisors of asbestos activities, and an Asbestos Program Manager).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530. Comments should refer to *United States* v. *Kimmins Environmental Services, Inc.*, DOJ Ref. 90–5–2–1–1401.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Middle District of Florida, 227 N. Bronough St., rm. 4014, Tallahassee, Florida 32801; and at the Consent Decree Library, 601 Pennsylvania Avenue NW., Washington, DC 20044, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page production costs), payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–25954 Filed 10–26–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, on September 15, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed a written notification on behalf of Bellcore and Hewlett-Packard Company ("HP") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities

of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and HP, Cupertino, CA. Bellcore and HP entered into an agreement effective on August 12, 1992, to engage in cooperative research activities directed to exploring the technology for broadband communications utilizing asynchronous transfer mode and ATM transport mechanisms, to better understand the applications of this technology for exchange and exchange access services, including research prototype fabrication for the experimental demonstration of such technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–25960 Filed 10–26–92; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984 Honeywell Inc.

Notice is hereby given that, on September 14, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Honeywell has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and its general areas of planned activities, are given below.

The parties to the venture are Honeywell, Inc., Minneapolis, MN; Minnesota Mining Manufacturing Co., St. Paul, MN; Hercules Aerospace Corp., Magna, UT; and Sheldahl Corp., Northfield, MN. The parties entered into a collaborative research agreement on July 15, 1992, to perform a Cooperative Agreement from the Department of Commerce, National Institute of Standards and Technology under its Advanced Technology Program for the purpose of better understanding the application of neural network-based sensor and control technology to complex materials processing and developing neural network-based sensors and controllers that can be used to optimize critical processes in the manufacturing of complex materials.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–25958 Filed 10–26–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on July 14, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: (1) The National Center for Manufacturing Sciences, Ann Arbor, MI, has become a sponsor of MCC's EINet Services Project; (2) Sutter Bay Associates/South Sutter Cable, Roseville, CA, and U.S. West Advanced Technologies, Boulder, CO, are participants in MCC's study program relating to multi-media applications.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on June 25, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 21, 1992 (57 FR 38067).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–25959 Filed 10–26–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on September 25, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: (1) MCC no longer provides administrative services to the American Display Consortium ("ADC") as described in MCC's July 30, 1991 additional notification. MCC will continue to perform research and development in connection with ADC under contract; (2) Cherry Display Products, Electro-Plasma, Inc., Magnascreen, OIS Optical Imaging Systems, Photonics Imaging, Planar Systems, Inc., Plasmaco, Inc., Standish Industries, Inc., and Tektronix, Incorporated, are no longer Associate Members of MCC; (3) Schmidt Industries, Houston, TX, has become a participant in MCC's Enabling Technologies Project within MCC's Packaging/Interconnect Technology Program; and (4) MCC will administer and conduct a technology study called Field Emission Display Project which will address the technical, manufacturing and business issues related to low cost, high performance field emission flat panel displays. IBM United Kingdom, a wholly owned subsidiary of IBM Corp., Hampshire, ENGLAND; FED Corp., Research Triangle Park, NC, and Schmidt Industries have become participants in this technology study.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on July 14, 1992. A **Federal Register** notice has not yet been published for the MCC notification filed on July 14, 1992.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–25961 Filed 10–26–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Clean Heavy Duty Engine Development Southwest Research Institute

Correction

In notice document FR Doc. 92–19687 appearing on pages 37557–37558 of the Wednesday, August 19, 1992 issue of the

Federal Register, in the third column of page 37557, in the first paragraph, in the twenty-sixth (26th) line, "Industrials" should read "Industriels".

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-25962 Filed 10-26-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Texas School District Cooperative Research Project: Cost Effectiveness of Alternative Fuels Using Life-Cycle Cost Benefit Analysis

Notice is hereby given that, on August 28, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Southwest Research Institute has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission of a project entitled Texas School District Cooperative Research Project: Cost Effectiveness of Alternative Fuels Using Life-Cycle Cost Benefit Analysis. The notifications disclose (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and its general area of planned activity are Southwest Research Institute, San Antonio, TX; Tyler Independent School District, Tyler, TX; Lufkin Independent School District, Lufkin, TX; Longview Independent School District, Longview, TX; Hallsville Independent School District, Hallsville, TX; Carthage Independent School District, Carthage, TX; Bowie County Schools Transportation Department, New Boston, TX; Pine Tree Independent School District, Longview, TX. The purpose of this project is to determine the most cost efficient alternative fuel for use in school buses in order for the school districts with fleets of 50 or more buses to comply with Texas law requirements. Such cost efficient evaluation will help assess the impact of converting existing diesel fleets as well as the acquisition of new alternative fuel buses.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-25967 Filed 10-26-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Immigration Nursing Relief Advisory Committee; Open Meeting

Summary: The Secretary's Immigration Nursing Relief Advisory Committee (INRAC) was established in accordance with Public Law 101-238, Immigration Nursing Relief Act of 1989 (INRA), on January 30, 1991. The Committee is to advise the Secretary on the effectiveness of the Immigration Nursing Relief Act of 1989 and on changes to that legislation. The Committee is charged with assessing: The impact of the INRA on the nursing shortage; programs that medical institutions implement to recruit and retain nurses who are U.S. citizens, or immigrants authorized to perform nursing services; and formulation of State recruitment and retention plans under the INRA; and the advisability of extending the provisions of INRA beyond the 5-year period specified in the Act.

Time and Place: The meeting will be held November 19, 1992 from 10 a.m. until 4:30 p.m. at the Ramada Renaissance Techworld Hotel, 999 Ninth Street NW., Washington, DC.

Agenda: The agenda provides for:

1. Introduction/Old Business.
2. Update on Status of Research Efforts.
3. Presentations by Research Contractors.
4. Organizational Matters.

Public Participation: The meeting will be open to the public. The last thirty minutes will be set aside for public comment. Seating will be available for the public on a first-come, first-serve basis.

Individuals or organizations wishing to submit written statements should provide 10 copies to Mrs. Karlyn Davis, Executive Director, Immigration Nursing Relief Advisory Committee, room S-2114, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Papers on or before November 9, 1992 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Mrs. Karlyn Davis, Exec. Dir., INRAC—room S-2114, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219-6026.

Signed at Washington, DC, this 22nd day of October, 1992.

Nancy Risque Rohrbach,

Assistant Secretary for Policy.

[FR Doc. 92-26031 Filed 10-26-92; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

[TA-W-27, 454, et al.]

Benton Casing Services, Inc., a/k/a Offshore Consultants, U.S.A. Ltd., a/k/a Complete Inspection, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 23, 1992, applicable to the workers at the subject firm. The certification notice was published in the **Federal Register** on October 13, 1992 (57 FR 46881).

At the request of the company, the Department reviewed the amended certification for workers of the subject firm. The investigation findings show that claimants wages for Benton Casing Services are being reported under Offshore Consultants, U.S.A. Ltd., and Complete Inspection, Inc., both of Houma, Louisiana.

Accordingly, the Department is correcting the amended certification to properly reflect this correct worker group.

The intent of the Department's certification is to include all workers of Benton Casing Services, Offshore Consultants, U.S.A. Ltd., and Complete Inspection, Inc., both in Houma, Louisiana.

The amended notice applicable to TA-W-27,454 and TA-W-27,454A-C are hereby issued as follows:

"All workers at the Winnie, Texas, TA-W-27,454; Victoria Texas, TA-W-27,454A; Lake Charles, Louisiana, TA-W-27,454B; and Houma, Louisiana, TA-W-27,454C plants of Benton Casing Services also known as Offshore Consultants, U.S.A., Ltd., and Complete Inspection, Inc., who became totally or partially separated from employment on or after June 15, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 19th day of October 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-26032 Filed 10-26-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,874]

General Motors Corp.; BOC Linden; Linden, NJ; Third Notice of Negative Determination on Reconsideration

Pursuant to a U.S. Court of International Trade order in *International Union, United Automobile Aerospace and Agricultural Implement Workers of America, UAW and UAW # Local 595* v. *Secretary of Labor* (USCIT 90-05-00263), the Department is affirming its initial denial of eligibility to apply for adjustment assistance for workers at General Motors Corporation's BOC plant in Linden, New Jersey.

This remand ordered that in determining whether vehicles are like or directly competitive with the vehicles produced by plaintiffs, the Department is to—

(1) Include in the record the factual data relied upon in determining passenger accommodations and cargo capacity and explain how they are applied in analyzing imported and domestic vehicles;

(2) Explain why its latest market segments include domestic vehicles with published prices which are lower than the published prices of imported vehicles when it stated in its First Supplemental Record that one must "adjust published prices of domestic vehicles significantly downward before comparing them to published prices of imports and;

(3) Explain on what basis it distinguished the eleven imported vehicles which were too small and or too inexpensive to be like or directly competitive with the vehicles produced by plaintiffs from the five domestic vehicles which plaintiffs claim are too small and or inexpensive to be like or directly competitive with the vehicles produced by plaintiffs.

On remand, the Department is including that part of the April 1989 issue of Consumer Reports which contains the measurements of several 1989 model vehicle size and accommodation indicators along with a page explaining the meaning and methodology behind each measurement. The Consumer Reports table contains the most complete and reliable data related to interior space measurements and trunk capacity.

An examination of the data from Consumer Reports shows that there is not a great deal of variation in interior measurements among those vehicles included in the market analysis for the present case. The largest differences are in luggage capacity. As Consumer Reports itself notes (page 268), "The tape measure doesn't tell you everything about comfort". Therefore, the interior measurements can only be used in conjunction with direct inspection of the vehicles in question to draw conclusions about passenger accommodations. The Department's auto analyst conducts just such an inspection every year, and uses the conclusions obtained from those inspections to help in making accurate judgments about vehicles which offer comparable passenger accommodations.

With respect to the Department's explanation as to why its latest market segments include domestic vehicles with lower published prices than imported vehicles, the Department has found that imported vehicles tend to have more standard equipment than base domestic vehicles. Also, the Department has been consistent in maintaining in all its analyses that base imported vehicles tend to have more standard equipment than base domestic vehicles. During the calendar years covered in the analysis (1988 and 1989), it was standard practice for domestic makers to publish base prices for stripped (poorly equipped) vehicles; importers did not follow this practice. Therefore, a true comparison of comparably equipped domestic and imported vehicles requires that domestic vehicles with lower base prices be included when enough equipment is added to the domestic vehicles to make them comparable with the imported vehicles, then the prices of the domestic vehicles will be comparable to the prices of the import vehicles.

Several academic studies have been done which demonstrate that trade restrictions cause imported vehicles to have higher levels of standard equipment than domestic vehicles of the same general size classification. One very commonly referenced study is "Quality Change Under Trade Restraints in Japanese Autos," by Robert C. Feenstra. The study compares prices and equipment levels for Japanese imports before and after the imposition of the Voluntary Restraint Agreement (VRA) in April, 1981; the data analyzed in the study are complete through 1985.

Feenstra's study confirms that the imposition of the VRA had two effects on the prices of Japanese imported cars. One effect was a pure price effect resulting from the decrease in supply. The other effect was that Japanese manufacturers upgraded the quality (added more standard features) of the cars they exported to the United States. Feenstra's econometric analysis estimated the size of these two effects to exceed $1,000 in 1983 and 1984.

Other data on average prices paid for domestic and imported cars compiled by the U.S. Department of Commerce's Bureau of Economic Analysis (as reported by the Motor Vehicle Manufacturers Association) confirm that imported cars were, on average, less expensive than domestic cars prior to 1981 and more expensive thereafter; the gap between the average expenditure for imported new cars and for domestic new cars is growing. In 1982, the difference was less than $100.00. By 1988, the difference had risen to over $1,500.00.

Because much of the price difference is due to the fact that Japanese base imports have higher levels of standard equipment than domestic base cars of the same size category, these findings are the basis for including certain domestic cars having lower base prices than the imported cars included in the analysis. Adding the equipment and options necessary to bring the domestic cars into comparability with the imports raises the domestics' prices to the same competitive level as the imports' prices.

Finally, the Court ordered that the Department explain its basis for distinguishing the eleven imported vehicles which were too small and/or too inexpensive to be like or directly competitive with the vehicles produced by plaintiffs from the five domestic vehicles which plaintiffs claim are too small and/or inexpensive to be like or directly competitive with the vehicles produced by plaintiffs.

The five domestic vehicles in question are: Ford·Escort, Mercury Lynx, Toyota Corolla, Chevrolet Nova/Geo Prizm, and Nissan Sentra. Since the Escort and Lynx are the same vehicles under different badges (as are the Corolla and Prizm), they will be considered together as Escort/Lynx.

The eleven imported vehicles in question are: Chevrolet Sprint/ Geo Metro, Suzuki Swift, Subaru Justy, Ford Festiva, Daihatsu Charade, Volkswagen Fox, Dodge/Plymouth Colt, Mitsubishi Precis, Hyundai Excel, Toyota Tercel, and Pontiac LeMans.

The attached table entitled "TABLE I—Vehicle Size, Accommodation, and Price Statistics" compares several characteristics of the five domestic vehicles in question with the same characteristics of the eleven imported vehicles in question. The Department has consistently maintained that no one characteristic of a vehicle defines its market segment. Taken together, the five different characteristics clearly show that the five domestic vehicles and the eleven imported vehicles are in different classes.

All of the vehicles have comparable front leg room. Rear leg room

measurements are also not generally different among these cars. However, there are very clear differences in wheelbase, overall length, luggage capacity, and price. The latter characteristics are more than important enough to distinguish the five domestic vehicles from the eleven imported vehicles in a market analysis.

TABLE I.—VEHICLE SIZE, ACCOMMODATION, AND PRICE STATISTICS

Model	WB	Overall length	Front leg room	Rear leg room	Luggage (cubic ft)	Price
	inches					
Escort/Lynx	94.2	169.4	41.0	26.5	18	7,299
Corolla	95.7	170.3	40.5	26.0	11	9,453
Nova/Prizm	95.7	170.7	40.5	25.5	14	9,995
Sentra	95.7	168.7	40.0	24.5	12	7,099
Sprint/Metro	89.2	146.1	41.0	27.5	10	6,250
Swift	89.2	146.1	41.0	27.5	10	7,755
Justy	90.0	145.5	40.5	23.5	9	5,866
Festiva	90.2	140.5	40.5	26.0	12	5,954
Charade	92.1	144.9	N/A	N/A	N/A	6,456
Fox	92.8	163.4	42.0	26.0	10	6,890
Colt	93.9	158.7	40.5	24.5	10	6,717
Precis	93.7	160.9	40.0	26.5	11	5,764
Excel	93.7	160.9	40.5	27.0	11	5,774
Tercel	93.7	157.3	40.5	25.0	13	6,583
LeMans	99.2	163.7	41.5	25.5	18	6,714

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of General Motors Corporation's BOC plant in Linden, New Jersey.

Signed at Washington, DC, this October 16, 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 92-26028 Filed 10-26-92; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of October 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,596; Ronitex Jacquard Mills, Inc., Paterson, NJ

TA-W-27,495; Maxwell House Coffee Co., Hoboken, NJ

TA-W-27,598; Hilliard Petroleum, Inc., Shreveport, LA

TA-W-27,607; NCR Corp., Dayton, OH

TA-W-27,586; Weyerhaeuser Co., Laminated Products Div., Cottage Grove, OR

TA-W-27,791; Sleep Robber, Inc., North Bend, OR

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,689; Petroleum Helicopters, Inc., Lafayette, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,597; Exxon Chemical Co., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,595; Pay & Pak Stores, Inc., Portland, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,552; Kawneer Co., Inc., Harrisonburg, VA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,599; Town & Country Chevrolet Oldsmobile-Geo, Inc., Russellville, AL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,631; Hollytex Carpet Mills, Inc., Anadarko, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,583; Pride Health Care, Metal Div., West Wyoming, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,287; Kerr-McGee Refining Corp., Oklahoma City, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,638, TA-W-27,639, TA-W-27,640, TA-W-27,641, TA-W-27,642, TA-W-27,643; The Dunham Brothers Co., Brattleboro, VT, Bennington, VT, Putnam Park-Canal St., Brattleboro, VT, Manchester, Ct., VT, Rutland, VT, Shelburne, VT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,644, TA-W-27,645, TA-W-27,646, TA-W-27,647, TA-W-27,648, TA-W-27,649, TA-W-27,650, TA-W-27,651; The Dunham Brothers Co., Concord, NH, 941 Main St., Keene, NH, Gilbo Ave., Keene, NH, Laconia, NH, K-Mart Plaza, Manchester, NH, Nashua, NH, North Conway, NH, Salem, NH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,652, TA-W-27,653, TA-W-27,654, TA-W-27,655, TA-W-27,656; The Dunham Brothers Co., Kittery, ME, South Portland, ME, Cranston, RI, East Providence, RI, North Kingstown, RI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,657, TA-W-27,658, TA-W-27,659, TA-W-27,660; The Dunham Brothers Co., Mystic CT, Norwalk, CT, Branford, CT, Matawan, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,661, TA-W-27,662, TA-W-27,663, TA-W-27,664, TA-W-27,665; The Dunham Brothers Co., Brockton, MA, Burlington, MA, Fall River, MA, Falmouth, MA, Fitchburg, MA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,666, TA-W-27,667, TA-W-27,668, TA-W-27,669, TA-W-27,670; The Dunham Brothers Co., Franklin, MA, Hadley, MA, Lenox, MA, Plymouth, MA, Quincy, MA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,671, TA-W-27,672, TA-W-27,673, TA-W-27,674, TA-W-27,675, TA-W-27,676; The Dunham Brothers Co., Sagamore, MA, Saugus, MA, Somerville, MA, Sturbridge, MA, West Springfield, MA, Yarmouth, MA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,677, TA-W-27,678, TA-W-27,679, TA-W-27,680; The Dunham Brothers Co., Albany, NY, Amsterdam, NY, Colonie, NY, East Greenbush, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,681, TA-W-27,682, TA-W-27,683; The Dunham Brothers Co., Lake George, NY, Latham, NY, Saratoga Springs, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,713; Reed Tool Co., Houston, TX

U.S. imports of oil and gas field machinery were negligible in 1991 and in January—July 1992.

TA-W-27,714; Dresser Industries, Guiberson Div., Dallas, TX

U.S. imports of oil and gas field machinery were negligible in 1991 and in January—July 1992.

TA-W-27,712; Dresser Industries, Security Div., Dallas, TX

U.S. imports of oil and gas field machinery were negligible in 1991 and in January—July 1992.

Affirmative Determinations

TA-W-27,727; Brown Shoe Co., Savannah, TNer, Ontario, OH

A certification was issued covering all workers separated on or after August 12, 1991.

TA-W-27,728; Brown Shoe Co., Union City, TN

A certification was issued covering all workers separated on or after August 13, 1991.

TA-W-27,745; Dole Packaged Foods Co., Lanai, HI

A certification was issued covering all workers separated on or after July 17, 1991.

TA-W-27,568 & TA-W-27, 568A; Multi-Shot, Inc., Broussard, LA and Corpus Christi, TX

A certification was issued covering all workers separated on or after June 23, 1991.

TA-W-27,580; Shape, Inc., Video Products Div., Kennebunk, ME

A certification was issued covering all workers separated on or after July 13, 1991.

TA-W-27,553; Dyac Corp., DBA Joseph Dyson & Sons, Painesville, OH

A certification was issued covering all workers separated on or after July 21, 1991.

TA-W-27,538; Unocal Corp., North American Oil and Gas Div., Southwestern Region, Headquartered in Midland, TX

A certification was issued covering all workers separated on or after July 10, 1991.

TA-W-27,542; Unocal Corp., Andrews District and Field Offices, Headquartered in Andrews, TX & Operating Out of The Following Locations A; Lovington, NM, B; Jal, NM

A certification was issued covering all workers separated on or after July 10, 1991.

TA-W-27,543; Unocal Corp., Farmington District, Headquartered in Farmington, NM, & Operating Out of The Following Locations; A; Bloomfield, NM and B; LaSalle, UT

A certification was issued covering all workers separated on or after July 10, 1991.

TA-W-27,544; Unocal Corp., Midland District Office, Headquartered in Midland, TX & Operating Out of The Following Locations: A; Leveland, TX, B; Snyder, TX, C; Coahoma, TX, D; Seminole, TX.

A certification was issued covering all workers separated on or after July 10, 1991.

TA-W-27,590; Jamieson Mfg Co., Stamping Dept, Italy, TX

A certification was issued covering all workers separated on or after January 17, 1992.

TA-W-27,563; Chiles Offshore Corp., Houston, TX

A certification was issued covering all workers separated on or after July 22, 1991.

TA-W-27,592; Smith Corona Corp., Cortland, NYI

A certification was issued covering all workers separated on or after July 23, 1991.

TA-W-27,435; Cook Bates Co., Venice, FL

A certification was issued covering all workers separated on or after June 16, 1991.

TA-W-27,414; Di-Anne Manufacturing Co., Lebanon, PA

A certification was issued covering all workers separated on or after June 8, 1991.

TA-W-27,571 & TA-W-27,571A; Homco Int'l, Inc., Wilburton, OK & Oklahoma District of Homco Int'l, Inc Operating in the State of Oklahoma

A certification was issued covering all workers separated on or after July 20, 1991.

TA-W-27,687; Union Pacific Resources, Corporate Headquarters Fort Worth, TX & Operating Out of The Following States: A; TX, B; WY, C; CO, D; CA, E; OK, F; LA, G; MO, H; UT

A certification was issued covering all workers separated on or after August 14, 1991.

TA–W–27,708, TA–W–27, 709, TA–W–27, 710; Pride petroleum Services, Inc., Alice, TX, Frier, TX, Rio Grande City, TX

A certification was issued covering all workers separated on or after August 12, 1991.

TA–W–27,711; Texas Swabbing, Inc., Corpus Christi, TX

A certification was issued covering all workers separated on or after August 12, 1991.

TA–W–27,516; Transmission Systems, Inc., Fort Stockton, TX

A certification was issued covering all workers separated on or after July 7, 1991.

TA–W–27,582; Fina Oil Chemical Co, Exploration & Production Group & Operating Out of The Following Locations: A; AL, B; CO, C; OK

A certification was issued covering all workers separated on or after July 22, 1991.

TA–W–27,548, TA–W–27,549, TA–W–27,550, TA–W–27,551; Fina Oil & Chemical Co., Exploration & Production Group, Dallas, TX, So. Louisiana Div., Houston, TX, So. Texas Div., Houston, TX, East Texas, Div., Tyler, TX, West Texas Div., Midland, TX

A certification was issued covering all workers separated on or after July 22, 1991.

TA–W–27,608; Clarostat Mfg Co., Inc., Norway, ME

A certification was issued covering all workers separated on or after July 29, 1991.

TA–W–27,723; Norwood Shoe Corp., Desoto, MO

A certification was issued covering all workers separated on or after August 18, 1991.

TA–W–27,604; Tekgraphics, Tektronix Corporate Group, Beaverton, OR

A certification was issued covering all workers separated on or after July 28, 1991.

TA–W–27,739; Rocky Mount Undergarment, Rocky Mount, NC

A certification was issued covering all workers separated on or after August 18, 1991.

TA–W–27,459 and TA–W–27,475; Trimfoot Co., Potosi, MO and Farmington, MO

A certification was issued covering all workers separated on or after June 17, 1991.

TA–W–27,623, TA–W–27,624; Unocal Corp., North American Oil and Gas Div., Southeastern Region, Headquartered in Sugarland, TX (Including Both Regional and District Offices), and Surfside Texas Shore Base and Offshore Platforms, Headquartered in Surfside, TX

A certification was issued covering all workers separated on or after August 11, 1991.

TA–W–27,625, TA–W–27,626; Unocal Corp., North American Oil and Gas Div., Southeastern Region, Ganado Field, Ganado, TX and East Texas District (Including Office, Plant and Field Operations), Van, TX

A certification was issued covering all workers separated on or after August 11, 1991.

TA–W–27,627, TA–W–27,628; Unocal Corp., North American Oil and Gas Div., Southeastern Region, Fort Trinidad Field, Lovelady, TX and Mobile District Office, Mobile, AL

A certification was issued covering all workers separated on or after August 11, 1991.

TA–W–27,629, TA–W–27,630; Unocal Corp., North American Oil and Gas Div., Southeastern Region, Chunchula Plant and Field, Chunchula, AL, and Oak Ridge Field, Vicksburg, MS

A certification was issued covering all workers separated on or after August 11, 1991.

TA–W–27,737; Fender Musical Instruments, Chula Vista, CA

A certification was issued covering all workers separated on or after April 15, 1992 and before September 19, 1992.

I hereby certify that the aforementioned determinations were issued during the month of September 1992. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: October 21, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–26033 Filed 10–26–92; 8:45 am]

BILLING CODE 4510–30–M

MERIT SYSTEMS PROTECTION BOARD

Appointment of Members of the Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice of appointment of members to the Performance Review Board.

SUMMARY: This notice publishes the names of new and current members of the Performance Review Board as required by 5 U.S.C. 4314(c)(4).

Llewellyn M. Fischer will continue to serve as Chairman of the Performance Review Board (PRB) as the Merit Systems Protection Board. Lois E. Hartman and P. J. Winzer have been appointed as new members. Also, Harold Kessler and Lonnie Crawford will continue to serve on the PRB.

EFFECTIVE DATE: October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Marsha E. Scialdo, Director, Human Resources Management Division, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

Dated: October 22, 1992.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 92–26015 Filed 10–26–92; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING MEETING

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: October 30, 1992, 10 a.m. to 12 noon.

ADDRESSES: Stouffer Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1111 18th Street, NW., #806, Washington, DC 20036, (202) 275–6933.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 92–26030 Filed 10–26–92; 8:45 am]

BILLING CODE 6820–07–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting

a notice of information collection that will affect the public. Interested persons are invited to submit comments by April 12, 1992. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained by contacting the individual listed. Comments may also be sent to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: 1993 National Survey of Science and Mathematics Education.

Affected Public: Individuals.

Respondents/Reporting Burden: 9,900 respondents; 30 minutes each response.

Abstract: Poor student performance in science and mathematics raises concern about science and mathematics instruction. Study will gather data from teachers on current status in these fields, including teacher qualifications and class activities. Results will be used for program planning at Federal, state, and local levels.

Dated: October 22, 1993.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 92–26012 Filed 10–26–92; 8:45 am]

BILLING CODE 7555–01–M

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by November 6, 1992. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Survey on Technical Education in Two-Year Institutions.

Affected Public: Non-Profit Institutions.

Respondents/Reporting Burden: 400 respondents; one hour each respondent.

Abstract: This and other HES panel surveys are responsive to a variety of policy issues in higher education. This survey collects data which describes science and engineering technology taught at the Nation's two-year institutions.

Dated: October 22, 1992.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 92–26013 Filed 10–26–92; 8:45 am]

BILLING CODE 7555–01–M

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 24, 1992. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicants

Mark Allen Chappell, Vaughan H. Shoemaker, Donald N. Janes, Jr., Corey Peterson, Biology Department, University of California, Riverside, CA 92521.

Activity for Which Permit Requested

Taking. Import into USA.

The applicants' study concerns reproductive effort and foraging activity in Adelie penguins (Pyoscelis adeliae). They intend to measure the energy and materials that a parent penguin needs to "invest" in order to produce chicks.

The permit application covers the following activities:

(1) Banding a total of 300 birds, including approximately 100 chicks and 200 adults.

(2) Collection of small blood, urine, and salt gland secretion samples from as many as 300 chicks throughout the season (this includes the above 100 banded, known-age chicks).

(3) Sacrifice for tissue sampling up to 10 injured adult birds, if they are judged unlikely to survive.

(4) Use of up to 60 chicks for temporary lab studies (30 for 7 days each and 30 for 12 hours or less) of metabolic rates, salt and water balance, energy utilization, and nitrogen excretion. After these studies the chicks will be returned, unharmed, to the colonies.

(5) Performing doubly labeled water (DLW) studies of field metabolic rate on up to 30 chicks. The DLW technique involves capturing birds and injecting them with water containing the stable isotopes oxygen-18 and deuterium. The bird is then released after an initial urine sample and recaptured for a final urine sample several days later.

(6) Sacrifice of a maximum of 25 chicks of various ages for ureteral urine collection and tissue sampling.

(7) Return of tissue samples and blood and other body fluids to the US for analysis.

Location

Vicinity of Palmer Station, Antarctica (primarily Torgersen Island), Access by small boats or by ski; Manner of taking: hand capture or hand net.

Dates

12/7/92–04/01/93.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92–25983 Filed 10–26–92; 8:45 am]

BILLING CODE 7555–01–M

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: John B. Talmadge, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On September 8, 1992, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to Warren M. Zapol, on October 16, 1992.

John B. Talmadge,

Permit Office, Division of Polar Programs.

[FR Doc. 92–25995 Filed 10–26–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Economics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics.

Date & Time: November 5, 1992, 8:30 a.m. to 6 p.m. November 6, 1992, 8:30 a.m. to 6 p.m. November 7, 1992, 8:30 a.m. to 1 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Part-Open.

Contact Persons: Dr. Lynn Pollnow, Program Director, National Science Foundation, 1800 G Street, NW., room 336, Washington, DC 20550, Telephone: 202/357–9674.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to NSF for financial support.

Agenda: Open session: November 6, 1992, 2 p.m. to 3 p.m. To discuss trends and opportunities in Economics.

Closed session: November 5, (8:30 a.m.) until November 7 (1 p.m.), except November 6, 2 p.m. until 3 p.m. To review and evaluate unsolicited research proposals, submitted to or being jointly considered by, the Economics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in arranging a suitable meeting time for the full committee.

Dated: October 22, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–25996 Filed 10–26–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Law and Social Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Social Science.

Date and Time: November 13, 1992, 9 a.m. to 5 p.m., November 14, 1992, 9 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Part-Open.

Contact Person: Susan O. White, Program Director, Law and Social Science Program, Division of Social and Economic Science, room 336, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, Telephone: (202) 357–9567.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: November 13, 1992, 1:30 p.m. to 2:30 p.m. to discuss trends and opportunities in the field of Law and Social Science.

Closed session: November 13, 9 a.m. to 1:30 p.m. and 2:30 p.m. to 6 p.m. November 14, 1992, 9 a.m. to 6 p.m. to review and evaluate Law and Social Science proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 22, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–25997 Filed 10–26–92; 8:45 am]

BILLING CODE 7555–01–M

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, room 208, 1800 G Street, NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Bransford at the above address or (202) 357–7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Frederick M. Bernthal, Deputy Director, Chairperson.
Constance K. McLindon, Director, Office of Information Resource Management, Executive Secretary.
Raymond E. Bye, Jr., Director, Office of Legislative and Public Affairs.
Mary E. Clutter, Assistant Director for Biological Sciences.
Luther S. Williams, Assistant Director for Education and Human Resources.

Dated: October 22, 1992.

John F. Wilkinson, Jr.,

Acting Director, Division of Human Resource Management.

[FR Doc. 92–26037 Filed 10–26–92; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care and Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of Public Law 87–693 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the three sets of rates outlined below are hereby established. These rates are for use in connection with the recovery, from tortiously liable third persons, of the cost of hospital and medical care and treatment furnished by the United States (Part 43, chapter I, title 28, Code of Federal Regulations) through three separate Federal agencies. The rates have been established in accordance with the requirements of OMB Circular A–25, requiring

reimbursement of the full cost of all services provided. The rates are established as follows:

(1) Department of Defense

Historical costs including purchases of supplies and equipment, base pay, allowances, permanent change of station costs, retirement pay and health benefits accrual costs, medical specialty pays and medical training are determined. These costs are then adjusted to reflect civilian and military pay raises and inflation to arrive at the estimated rates. An asset charge is included to reflect depreciation.

(2) Department of Veterans Affairs

The actual costs and per diem rates by type of care for the previous year are added to the estimated costs for depreciation of buildings and equipment, administrative overhead, interest on capital investment, and Government employee retirement and disability charges. These computed rates are then adjusted by the budgeted percentage change to arrive at the estimated rates.

(3) Department of Health and Human Services

The sum of obligations for each cost center providing medical service is broken down into amounts attributable to inpatient care on the basis of the proportion of staff devoted to each cost center. Total inpatient costs and outpatient costs thus determined are divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. In calculation of the rates, the Department's unfunded retirement liability cost and capital and equipment depreciation cost were incorporated to conform to requirements set forth in OMB Circular A–25. In addition, each cost center's obligations include all costs for accounts, such as Medicare and Medicaid collections and Contract Health funds used to support direct program operation. Inclusion of these funds yields a more accurate indication of the cost of care in HHS facilities.

These rates represent the reasonable cost of hospital, nursing home, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished by the United States in Federal hospitals, nursing homes, and outpatient clinics administered by the Department of Defense, the Department of Veterans Affairs, or the Department of Health and Human Services.

For such care and treatment furnished at the expense of the United States in a facility not operated by the United States, the rates shall be the amounts expended for such care and treatment.

	Effective October 1, 1992 and thereafter		
	DOD	VA	HHS
Hospital care inpatient day:			
General medical care	777	802	1,292
Surgical care	1,022	1,164	
Psychiatric care		410	
Intermediate care		317	
Neurology		712	
Rehabilitation medicine		566	
Blind rehabilitation		644	
Alcohol and drug treatment		337	
Prescription		20	
Nursing home care		227	
Spinal cord injury care		761	
Burn Center, U.S. Army Institute of Surgical Research, Brooke Army Medical Center, Fort Sam Houston, Texas	2,761		
Obstetrical and gynecological care	993		
Pediatric care	802		
Orthopedic care	881		
Psychiatric care and substance abuse	508		
Family practice	716		
Medical intensive care and coronary care	1,749		
Surgical intensive care	1,767		
Neonatal intensive care	1,104		
Organ and bone marrow transplants	1,814		
Same day surgery	447		
Outpatient medical and dental treatment:			
Outpatient visit	100	163	163
Dental outpatient visit		97	

For the period beginning October 1, 1992, the rates prescribed herein superseded those established by the Director of the Office of Management and Budget on October 16, 1991 (56 CFR 51940).

Dated: October 1992.

Richard Darman,

Director, Office of Management and Budget.

[FR Doc. 92–26047 Filed 10–26–92; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31338; File No. SR–CBOE–92–13]

Self-Regulatory Organizations; Filing of Amendment No. 2 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Index Options With Quarterly Expirations

October 19, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing in File No. SR–CBOE–92–13 to list and trade options on the Standard & Poor's ("S&P") 100 and 500 Stock Indexes that will expire on the first business day of the month following the end of each calendar quarter ("Quarterly Index Expiration" or "QIXs").[1] Amendment No. 2 to this filing revises and restates the position limit provisions of the Exchange's rules that will apply to QIXs.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of Amendment No. 2 to file No. SR–CBOE–92–13 is to restate the provisions of the proposed rule change that describe the position limit and position limit exemptive rules applicable to QIXs. In particular, the Exchange is proposing: (1) That QIXs on the S&P 500 Index ("QIX SPXs") be aggregated with and treated identically to A.M.-settled, European-style option contracts on the S&P 500 Index ("A.M.-settled SPXs") for all position limit purposes; and (2) that QIXs on the S&P 100 Index ("QIX

[1] See Securities Exchange Act Release No. 31010 (August 7, 1992), 57 FR 37176.

OEXs") be treated like all other options on the S&P 100 Index ("OEXs") for all position limit purposes, except for the requirement in the CBOE's rules that limits the number of contracts in the series of any broad-based index option with the nearest expiration (the "telescoping requirement").[2]

QIX SPXs. The CBOE believes that treating QIX SPXs like A.M.-settled SPXs is appropriate, even though QIX SPXs will be P.M.-settled, because QIXs will never expire on the same day as other non-flexible Exchange index options.[3] Thus, the CBOE believes that QIX SPX expirations will have no market impact on any "Expiration Friday" (i.e., the one Friday in each month on which at least one stock index derivative instrument expires), and, also that they will have no market impact on any of the Expiration Fridays in March, June, September and December ("quarterly expirations"), when stock index futures, stock index options, and options on stock index futures all expire concurrently. In this sense, the CBOE believes that QIXs will have the effect of "spreading" index option expiration dates across an additional day in each calendar quarter.

As proposed in Amendment No. 2, QIX SPXs will be treated identically to A.M.-settled SPXs for all position limit and related purposes, while positions in all other S&P 500 index options will be subject to two position limit tests. First, under CBOE Rule 24.4(a), all positions in S&P 500 index options, other than QIX SPXs and A.M.-settled SPXs, will be subject to a 25,000 contract limit, with a 15,000 contract telescoping requirement for near-term expiration months. Second, under Rule 24.4(b), all positions in QIX SPXs and A.M.-settled SPXs will be subject to a 45,000 contract limit, without any telescoping requirement. In addition, QIX SPXs will also be treated identically to A.M.-settled SPXs for purposes of all hedging exemptions from position limits permitted in the Exchange's rules.[4]

QIX OEXs. The CBOE proposes to treat QIX OEXs like all other OEXs for position limit purposes, except that the CBOE proposes not to apply the telescoping requirement to QIX OEXs. The CBOE believes that the telescoping requirement should not be applied to QIX OEXs because it believes that QIX OEX expirations will have no market impact on any Expiration Friday, including quarterly expirations. Positions in OEXs would therefore be subject to two position limit tests. First, under Rule 24.4(a), all positions in OEXs, other than QIX OEXs, would be subject to a 25,000 contract limit, with a 15,000 contract telescoping requirement. Second, under Rule 24.4(c), all positions in QIX OEXs would be subject to a 25,000 contract limit, with no telescoping requirement. Like other OEXs, QIX OEXs would be subject to a 75,000 contract hedge exemption limit, and would not be eligible for any facilitation exemptions from position limits.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by November 17, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-25963 Filed 10-26-92; 8:45 am]

BILLING CODE 8010-01-M

[2] Unless provided otherwise in CBOE's rules, the telescoping provision in CBOE Rule 24.4 limits the size of positions in near-term expiration months in broad-based stock index options to 15,000 contracts on the same side of the market.

[3] QIXs will expire on the first business day of the month following the end of a calendar quarter, and the exercise settlement value for QIXs will be based on the closing index value of the last trading day of the preceding calendar quarter (i.e., the 30th or 31st of a month, but possibly as early as the 28th of a month in the event that the 30th is a Sunday). All other index options expire on the Saturday immediately following the third Friday of the expiration month, and their exercise settlement values are based on the closing index value or opening index value (as applicable) on the preceding trading day (i.e., no later than the 21st of any month).

Flexible Exchange Options ("FLEX Options") have been proposed for trading by the CBOE in File No. SR-CBOE-92-17. It is possible that the parties to a FLEX option contract may designate the expiration date of the option as the first business day of a calendar quarter, i.e., the expiration date for QIXs. However, the Exchange believes, for many reasons (among them, the diversity inherent in FLEX Options and the unlikeliness of any significant secondary trading in FLEX Options) that it is extremely unlikely that QIX expirations and FLEX option expirations would ever have any cumulative market impact.

[4] No more than 25,000 contracts, however, may be used for purposes of taking advantage of any differential in price between options on the S&P 500 index and the securities underlying the S&P 500. This position limit proposal for QIX SPXs seeks to have QIX SPX contracts treated in the same manner as A.M.-settled SPX contracts. *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (approval of A.M.-settled SPX position limit rule).

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

October 21, 1992.

On October 9, 1992, the Midwest Stock Exchange, Inc. ("MSE") submitted an application to withdraw unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the followirg over-the-counter ("OTC") security, *i.e.*, security not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7-9271..	MAGAF	Magna International, Inc., Class A Subordinated Voting Shares, No par value.

The above-referenced issue forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

Withdrawal of this issue is requested as it has listed on the New York Stock Exchange and is thus ineligible for continued inclusion in the OTC/UTP program.

Comments

Interested persons are invited to submit, on or before November 12, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-25964 Filed 10-26-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

October 21, 1992.

On October 2, 1992, the Midwest Stock Exchange, Inc. ("MSE") submitted an application to withdraw unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, security not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7-9257..	SCAF	Surgical Care Affiliates, Inc., Common Stock, $.25 par value.

The above-referenced issue forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

Withdrawal of this issue is requested as it has listed on the New York Stock Exchange and is thus ineligible for continued inclusion in the OTC/UTP program.

Comments

Interested persons are invited to submit, on or before November 12, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-25965 Filed 10-26-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31343; File No. SR-NYSE-90-39]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Amendments to Exchange Rule 72—Priority and Precedence of Bids and Offers

October 21, 1992.

I. Introduction

On September 7, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend NYSE Rule 72 relating to the priority and precedence of bids and offers. The proposed rule specifies that agency block cross transactions,[3] where both buy and sell orders are for accounts other than that of a member or member organization, can be effected without interference at the proposed cross price. The proposal, however, would allow the cross to be broken up at a price that is better than the proposed cross price for one side or the other. The proposed rule change is known as the "clean cross" proposal.

Notice of the proposal appeared in the **Federal Register** on September 25, 1990.[4] The Commission received one comment letter.[5] On January 16, 1992, an amendment was filed by the NYSE to increase the share size of the blocks subject to the proposal.[6] This order approves the proposal.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] In a cross transaction, a member who has an order to buy and an order to sell an equivalent amount of the same stock wishes to execute the orders against each other. Because the member already has both sides of the trade, the member does not wish to interact with other market interest. The member, however, must comply with the provisions of NYSE Rule 76 and make a public bid and offer on behalf of both sides of the cross before making the transaction. The offer must be made at a price which is higher than the bid by the minimum variation permitted in the security. See NYSE Rule 26.

[4] See Securities Exchange Act Release No. 28453 (September 19, 1990), 55 FR 39223 (September 25, 1990).

[5] See letter from Junius W. Peake, Chairman, the Peake/Ryerson Consulting Group, Inc. and Morris Mendelson, Professor of Finance, University of Pennsylvania, to the Secretary, Commission, dated October 18, 1990.

[6] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary Revell,

Continued

II. Background

The Exchange's auction market procedures are codified in NYSE Rule 72, which provides for the manner in which bids and offers at the same price will be sequenced for execution. A member who makes the first bid or offer at a particular price has "priority" at that price, which means that the member is the first one in the market entitled to receive an execution at that price.[7] If no member can claim priority, all members who are bidding or offering at a particular price are deemed to be on "parity" with each other, or equivalent in status.[8] When members are on parity, a member who can fill a bid or offer in its entirety may claim "precedence based on size," and thereby be entitled to the next execution at that price.[9] When members are on parity and no member's bid or offer can fill the entire offer or bid, the member whose bid or offer is larger than other bids or offers also may claim "precedence based on size." This aspect of Rule 72 commonly is referred to as "sizing out" other market interest.

Currently, members attempting to effect a "cross" transaction may be required to yield either some or all of one side of their cross in accordance with these rules. More specifically, a cross transaction may be "broken up" (*i.e.*, participated in by another member) in either of two instances: The member executing the cross may be "sized out" by other market interest at the same price, or other members may break up the cross by trading with either the bid or the offer side of the transaction. The NYSE states that the proposed amendment to Rule 72 would facilitate the ability of members to execute certain types of cross transactions on the Exchange at the cross price, while still providing the opportunity in the auction market for another member to offer price improvement to the buyer or seller, as the case may be.

III. Description of the Proposal

The NYSE proposes to amend its priority rules to allow a member who has an order to buy and an order to sell 25,000 shares or more of the same security, where neither order is for the account of a member or a member organization, to cross those orders at a price that is at or within the prevailing quotations without being broken up at the cross price, irrespective of preexisting bids and offers at that price.[10] The proposal would allow another member to trade with either the bid or offer side of the cross transaction to provide a price that is better than the proposed cross price, but the other member could not trade with the cross bid or offer at a price which is the same as the cross price. Moreover, the proposal would require that the member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction[11]

The following example illustrates the operation of the proposed rule change: Assume the market in XYZ is quoted 20 bid, 20⅛ offer, 40,000 shares by 30,000 shares. A member intending to effect a 25,000 share "agency cross" transaction at a price of 20 must announce the cross in accordance with the crossing procedures of Rule 76[12] and bid 20 for 25,000 shares and offer 25,000 shares at 20⅛. Under the clean cross rules, the member's bid at 20 would have priority, and the proposed cross could not be broken up at 20⅛, as this would provide a better price to the seller. A member intending to trade with the offer side of the cross, however, would first have to take out the entire 30,000 share offer on the book at 20⅛, which was entitled to priority at that price, before trading with any part of the offer side of the cross.

As a second example, assume the market in XYZ is quoted 20 to 20⅜, 20,000 shares by 20,000 shares. A member intending to effect a 25,000 share agency cross transaction at a price of 20⅛ must announce the cross in accordance with NYSE Rule 76 and bid 20⅛ for 25,000 shares and offer 25,000 shares at 20¼. The member's bid at 20⅛ has priority, and the proposed cross could not be broken up at this price. The proposed cross could, however, be broken up, in whole or in part, at 20¼, as this would provide a better price to the seller. In this example, because the market is 20 to 20⅜, and there is no market interest on the book that has priority at 20¼, the member breaking up the cross could trade with the offer side of the cross without having to trade with any limit orders on the book.

The NYSE believes that the proposed rule change maintains the auction market principle of price improvement by allowing the cross to be broken up at a better price. The NYSE also believes that the proposal preserves the auction market principle of priority by requiring that a member who wants to break up a cross by providing a better price must first satisfy all other market interest having priority at that better price before trading with any part of the cross transaction.

The NYSE states, moreover, that granting priority to a member for block-sized transactions at the cross price does not necessarily, as a practical matter, disadvantage other orders at that price. The NYSE argues that the proposal does not disadvantage market interest of smaller size at the cross price because, under the current rules, the member may trade 100 shares, put himself or herself on parity with other bids or offers at the cross price, claim precedence based on size as to such smaller bids or offers, and then consummate the cross transaction, leaving small orders unexecuted.

The NYSE believes, furthermore, that the proposal does not disadvantage market interest of larger size. The NYSE believes that in situations where a member has probed the market on the NYSE floor and determined that he or she will not be able to claim precedence based on size on behalf of the cross transaction because other market interest exists that is larger in size than the proposed cross, it is likely that the cross will be executed at another market center at the agreed-upon cross price with no opportunity for other orders to interact with the cross, either at the cross price or at a better price.

The NYSE believes that the proposed rule change will make it easier for public customers to effect block-sized transactions on the NYSE at the cross price, while still providing the opportunity for other market interest to offer a better price to one side or the other of the cross. In addition, the NYSE notes that the proposal is limited to block-sized orders of public customers only, and this is neither applicable to, nor gives any advantage to, members and member organizations in their proprietary trading, including the facilitation of block transactions.

Branch Chief, Commission, dated January 16, 1992. The NYSE's original clean cross proposal would have applied to agency crosses of 10,000 shares or more. Amendment No. 1 modifies the clean cross proposal to apply to agency crosses of 10,000 shares or more. Amendment No. 1 modifies that clean cross proposal to apply to agency cross transactions of 25,000 shares or more.

[7] See NYSE Rule 72 I(a) and II.

[8] See NYSE Rule 72 I(b) and II. Members are on parity with each other when bids or offers are announced simultaneously, or after a trade takes place leaving several bids or offers unfilled at the same price as the executed trade.

[9] See NYSE Rule 72 I(c) and II.

[10] The NYSE would continue to require that the member follow the crossing procedures of NYSE Rule 76 and make a public bid and offer on behalf of both sides of the cross. See *supra* note 3.

[11] The proposal also would require that transactions effected at the cross price in reliance on the clean cross rule be identified as "stopped stock." According to the NYSE, this identification of clean cross transactions will inform members that the transaction was outside of normal market procedures.

[12] See *supra* note 3.

IV. Comments and NYSE Response

The Commission received one comment letter on the proposed rule change, from Junius W. Peake, Chairman, the Peake/Ryerson Consulting Group, Inc. and Morris Mendelson, Professor of Finance, the University of Pennsylvania.[13] Peake and Mendelson recommended that the Commission hold hearings on the NYSE's proposal in order to examine the efficiency of existing market structures. Peake and Mendelson raise several arguments in support of their position. First, they argue that the proposal will reduce investor confidence in the markets. Second, they argue that the proposal would contribute to a "two-tiered" market structure because the proposal would accentuate the disparity of treatment on the floor between small and large investors. Third, they argue that the proposal would result in the internalization of order flow and market fragmentation. Finally, they argue that the proposal would harm the process of price discovery.

The NYSE has responded to the issues raised by Peake and Mendelson with respect to the operation of the proposed rule change.[14] First, Peake and Mendelson assert that only if the spread was greater than the minimum price differential would there be any chance that a cross transaction would be interfered with by another member under the proposed rule change. In response, the NYSE states that the proposal would allow a cross to be broken regardless of whether the quotation spread is the minimum price differential. The NYSE states that the member breaking up the cross must meet the following conditions: (1) He or she must provide a better price than the cross price to one side of the cross and (2) he or she must satisfy in their entirety any bids or offers that have priority at that better price before taking any part of the cross.

Second, Peake and Mendelson argue that cross trades would not participate directly in the price discovery process unless the spread was greater than the minimum price differential and an order of at least the size of the proposed cross was willing to trade at a better price on either side of the market. In response, the NYSE argues that its proposal does provide the opportunity for price discovery. The NYSE states that other market interest of any size may break up a cross by providing a better price to one side or the other of the cross, so long as the two above conditions are met. Moreover, the NYSE states that the member breaking up the cross does not need to fill or to take one side of the cross in its entirety.

Finally, Peake and Mendelson argue that the proposal would reduce investor confidence in the markets. In response, the NYSE argues that the proposal protects the interest of public investors. The NYSE states that auction market principles are preserved in the proposal. The NYSE also states that the proposal would make it easier for public customers to effect block size transactions on the NYSE at the cross price, while still providing the opportunity for price discovery in a manner consistent with auction market principles.

V. Discussion

The NYSE clean cross proposal is designed to facilitate the execution of cross transactions on the Exchange. As discussed below, due to the NYSE's current priority rules, some NYSE members have developed the practice of transporting cross trades to the regional exchanges for execution, avoiding exposure to the NYSE's active trading crowd and to limit orders on the NYSE's specialists' books. The clean cross proposal, in contrast, should encourage NYSE members to execute their cross transactions on the NYSE because the proposal would allow a member who has a customer order to buy and a customer order to sell 25,000 shares or more of the same security to cross those orders at a price that is at or within the prevailing quotation, irrespective of pre-existing bids and offers at that price. The proposal would allow another member to trade with either the bid or offer side of the cross to provide a price that is better than the proposed cross price, but the other member could not trade with the cross bid or offer at a price which is the same as the cross price. Moreover, the proposal would uphold traditional auction market principles of priority and price improvement because it would require that the member who is providing a better price to one side of the cross must trade with all other market interest having priority at that price before trading with any part of the cross.

The Commission recognizes that the NYSE's clean cross proposal was prompted by the competition that exists between the NYSE and the regional exchanges for order flow and, in particular, for block business. The Commission also recognizes that the NYSE's current priority rules may restrict the ability of NYSE members to execute agency block cross transactions on the Exchange. Under the current rules, a member who tries to execute a block-sized agency cross on the NYSE faces the possibility that another member will break up the cross at the cross price. If a member is unable to claim precedence based on size under the NYSE's current rules, the member may take block-sized orders in NYSE-listed securities to a regional stock exchange for execution. The small number of limit orders on the books of the regional stock exchange specialists and the virtual absence of a trading crowd at the regional exchanges helps to ensure that member firms will be able to execute their cross transactions on the regional exchanges with little or no interference. Indeed, the regional exchanges compete aggressively with the NYSE for block transactions. In addition, blocks go to the regional exchanges because of the low probability that a block will be broken up on the regional exchange.

The clean cross proposal should facilitate the ability of NYSE members to execute a block cross transaction on the NYSE by giving such orders priority over orders at or within the prevailing quotation. At the same time, the proposal preserves the auction market principle of price improvement by permitting the cross transaction to be broken up at a better price. The proposal also preserves the principle of priority by requiring that a member who breaks up a cross by providing a better price must first satisfy all existing market interest having priority at that better price before trading with any part of the cross.

The Commission recognizes that approval of the clean cross proposal could disadvantage orders on the book, or in the trading crowd, at the same price as the cross transaction. This is the only aspect of the proposal that really represents a departure from existing auction market principles. Thus, under the proposal, a clean cross could be executed while a public investor's limit order on the book remains unexecuted. For example, if a public customer left a limit order on the specialist's book at 10 a.m., bidding for 500 shares of XYZ at 40, a so-called clean cross could be executed at 10:10 at a price of 40 without satisfying the public customer order.

The Commission originally attempted to address the underlying issues of limit order protection and competition among the exchanges through an integrated national market system rule, specifically in its proposed Rule 11Ac1–3. The Commission proposed Rule 11Ac1–3

[13] See *supra* note 5.

[14] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated December 27, 1990.

under the Act in 1979 to require that all limit orders that are collected in a particular market center receive inter-market price protection against executions at inferior prices.[15] In its release proposing the adoption of Rule 11Ac1–3, the Commission specifically addressed the practice of transporting block orders from one market to another to avoid limit orders in that market. The Commission stated that

> * * * because the proposed rule, if adopted, would, for all practical purposes, require the clearing of all public limit orders in all markets in connection with any block transaction executed away from the market, it would no longer be possible to avoid limit orders in one market—particularly limit orders on the book in the "primary" market—by executing the block in some other market center where limit order interest may be minimal. As a result, adoption of the proposal arguably may adversely affect the ability of the regional exchanges to continue to attract blocks for execution.[16]

Due to the lack of interest from the relevant markets and potential difficulties in implementing a system for inter-market price protection, the Commission has withdrawn proposed Rule 11Ac1–3.[17]

The Commission recognizes that the NYSE's proposal may not be the ideal means to address the current situation, in which a block transaction can be effected on one of the regional exchanges or in the third market and completely avoid the NYSE's limit order book. A preferable approach would be to establish a means of inter-market price protection for all limit orders in all market centers. However, with no means of inter-market price protection for public limit orders, it is unfair to preclude the NYSE from amending its rules to adapt to the present competitive environment by facilitating the execution of agency block cross transactions on the Exchange. Thus, the Commission believes that it is not unreasonable or inconsistent with the Act for the NYSE to react to competitive pressures for block business by permitting large agency crosses to occur at or within the bid or offer price. The proposed rule change should further competition among exchanges and other competing market centers and increase opportunities for the more efficient execution of block-sized cross transactions.

As described above, members who do not believe that they can execute their block-sized orders on the NYSE currently take their orders to the regional stock exchanges, completely avoiding exposure to limit orders on the NYSE specialist's book. The Commission believes that approval of the proposal will not result in incremental harm to public customers. Assume, for example, that the market in XYZ is quoted 20¼ bid, 20⅜ offer, 100,000 shares by 100,000 shares. Investor A has a limit buy order on the book at 20¼ for 1,000 shares of XYZ. In today's environment, a member intending to effect a 100,000 share agency cross transaction at a price of 20¼ could go to another market to execute the cross, thereby avoiding exposure to Investor A's limit buy order of 20¼. As a result of the proposed rule change, the member would, to comply with Rule 76, bid 20¼ for 100,000 shares and offer 100,000 shares at 20⅜ on the NYSE floor. The member's 100,000 share clean cross of 20¼ would have priority, and the cross could not be broken up at that price. Although Investor A's limit buy order would not be executed, this is the same result as if the block was done on another market under the NYSE's current rules.

The Commission also believes that the proposal restricts sufficiently the circumstances in which members may execute clean cross transactions on the Exchange. In particular, the Commission believes that the share size threshold of 25,000 shares or more should help to ensure that the clean cross proposal will apply primarily to larger block-sized orders where the depth of the prevailing bid or offer may be less likely to satisfy either side of the clean cross. In addition, because the proposal is limited to non-member orders only, the proposal should assist public customers in effecting cross transactions on the NYSE and should not give any special advantage to members and member organizations in their proprietary trading.

The Commission does not agree with Peake and Mendelson's recommendation that it is necessary to hold hearings on the clean cross proposal. The proposal was published in the **Federal Register** for the full statutory period under the Act [18] which gave interested persons full opportunity to express their views and arguments with respect to the proposal. The Commission received only one comment letter, from Peake and Mendelson, as a result of the proposed rule change. The Commission believes that the NYSE has addressed the relevant questions raised in the comment letter. The Commission, therefore, finds that it has met its statutory notice requirements under section 19 of the Act [19] through publication of the proposed rule change which provided the opportunity for the submission of written views and comments by interested persons, and believes it is unnecessary to hold hearings on the proposal.

After careful consideration of Peake and Mendelson's arguments with respect to the proposed rule change, the Commission believes that the issues raised in their comment letter do not preclude approval of the proposal. The Commission believes that the clean cross proposal should allow the NYSE to compete with other exchanges for block-sized orders more fairly while upholding the auction market principle of price improvement. Thus, the proposal should improve, rather than reduce, investor confidence in a fair and efficient market.

Moreover, the Commission does not believe that the proposed rule change would contribute to a two-tiered market structure, resulting in a disparity of treatment between small orders and institutional orders, or cause brokerage firms to internalize their order flow. Current NYSE rules permit Exchange members to execute cross transactions on the Exchange. As noted above, a member may take block cross transactions to a regional exchange for execution or trade a single round lot and then "size out" the remaining interest. In the absence of a central limit order book, the practical effect of the proposal is therefore quite limited. The proposal merely would simplify the ability of a member to execute block-sized cross transactions on the NYSE, without unduly overriding the auction market principle of price improvement.

The Commission does not believe that the proposal should cause market fragmentation because the proposed rule and its auction market principles are consistent with the development of an open and competitive national market system. As noted above, the Commission believes that the proposal

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[15] Securities Exchange Act Release No. 15770 (April 26, 1979), 44 FR 26692.

[16] *Id.* The Commission acknowledged, at that time, that the avoidance of public limit order interest in the "primary market" was only one of the factors which may influence the selection of a market where a block transaction would be executed.

[17] See Securities Exchange Act Release No. 31344.

[18] See Securities Exchange Act Release No. 28453 (September 19, 1990), 55 FR 39223 (September 25, 1990).

[19] 15 U.S.C. 78s(b)(1) (1988). Section 19(b)(1) of the Act provides that the Commission, upon filing of a proposed rule change, must publish notice thereof and give interested persons the opportunity to submit written data, views, and arguments concerning the proposed rule change.

should increase fair competition among the exchanges for block size orders. The Commission believes that the proposal should provide customers or their brokers with greater choice to determine, at any given time, where a block transaction should be effected.

Finally, the Commission believes that the clean cross proposal provides adequate opportunity for price discovery. While the proposed rule allows market interest of any size to break up a cross transaction, the rule also requires that a member breaking up a cross must provide a better price than the cross price to one side of the cross and he or she must satisfy in their entirety and bids or offers that have priority at that better price before taking any part of the cross.

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. The proposed rule change, which was published in the **Federal Register** for the full statutory period, provided that the clean cross rule would apply to agency crosses of 10,000 shares or more. The proposed amendment simply limits the application of the clean cross rule to agency crosses of 25,000 shares or more.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–90–39 and should be submitted by November 17, 1992.

VI. Conclusion

For the above reasons, the Commission believes that the proposed rule change is not inconsistent with Sections 6(b)(5), 6(b)(8) and 11A(a)(1)(C)(ii) of the Act.[20]

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change is approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–26004 Filed 10–26–92; 8:45 am]

BILLING CODE 8010–01–M

[20] 15 U.S.C. 78f and 78k–1 (1988).

[21] 15 U.S.C. 78s(b)(2) (1988).

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues

October 21, 1992.

On October 1, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(b) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–9265	SDRC	Structural Dynamics Research Corp., Common Stock, $0.0069 Stated Value.
7–9266	KNOW	Knowledgeware Inc., Common Stock, No Par Value.
7–9267	REIC	Research Industries Corp., Common Stock, $0.50 Par Value.
7–9268	ATLI	Advanced Technology Laboratories Inc., Common Stock, $0.01 Par Value.
7–9269	FITB	Fifth Third Bancorp, Common Stock, No Par Value.
7–9270	LINB	Lin Broadcasting Corporation, Common Stock, $0.01 Par Value.

Comments

Interested persons are invited to submit, on or before November 12, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(1), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–25966 Filed 10–26–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1709]

Ad Hoc U.S. Task Group 7/3 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Ad Hoc U.S. Task Group 7/3 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting November 18, 1992 at MITRE Corporation, 409 Third Street, SW., Washington, DC in suite 300 commencing at 9:30 a.m.

CCIR Study Group 7 deals with matters relating to the space research systems and standard frequency and time systems. Task Group 7/3 was established to examine the effects of the WARC–92 allocation to the fixed-satellite service (Earth-to space) in the band 13.75–14.00 GHz on the science services (space research and Earth exploration-satellite) allocation in the same band. Task Group 7/3 will also recommend possible actions that a future WARC could consider if it is found that modifications to the Radio Regulations would benefit the science services. The first meeting of Task Group 7/3, is scheduled for 24–26 March 1993 in Geneva under the chairmanship of Mr. J.W. Kiebler, of the United States.

The purpose of the Ad Hoc U.S. Task Group 7/3 meeting is to organize a work plan to prepare for the international meeting in March.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. John Kiebler, MITRE Corporation, (202) 646–9113.

Dated: October 7, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92–25953 Filed 10–26–92; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Structural Substantiation of Part 23 Airplane Modifications Involving Increased Engine Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC, which provides information and guidance concerning structural substantiation of part 23 airplane modifications involving increased engine power.

DATES: Comments must be received on or before December 28, 1992.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Julea Bell, Standards Staff (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**"

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 23–XX–15 and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

This proposed AC was previously published in the **Federal Register**, with request for comments (53 FR 1880, January 22, 1988). Comments received from this coordination have been considered and appropriate changes were incorporated in the AC. Due to the elapsed time since the initial request for comments, the FAA has decided to re-notice the proposed AC. The FAA has become aware of the need for guidance material concerning structural substantiation of part 23 airplanes for increased engine power. The guidance provided by this AC is intended to promote uniformity of application of the certification rules. In the past, some FAA approvals involving increased engine power have required complete structural substantiation regardless of magnitude of the engine power or weight increase. Other approvals have been made on the basis of appendix A of the Civil Aeronautics Manual (CAM) 8 which permits engine changes with no additional structural substantiation, provided the engine weight increase is not greater than 10 percent of the originally certificated engine weight and the torque increase does not exceed 20 percent of the original torque corresponding to the originally certificated engine power. Accordingly, the FAA is proposing and requesting comments on AC 23–XX–15, which will provide information and guidance concerning acceptable means of demonstrating compliance with the requirements of part 23 of the Federal Aviation Regulations (FAR) applicable to the structural substantiation of modifications involving increased engine power.

Issued in Kansas City, Missouri, October 14, 1992.

John Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–25992 Filed 10–26–92; 8:45 am]

BILLING CODE 4910–13–M

System Capacity Advisory Committee; Reestablishment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of System Capacity Advisory Committee reestablishment.

SUMMARY: Notice is hereby given of the reestablishment of the System Capacity Advisory Committee. The Director of System Capacity and Requirements is the sponsor of the Committee, which will consist of members designated by the Administrator as representatives of a broad perspective of the aviation community, environmental interests, and state and local interests. The Committee will provide advice and recommendations on the needs, objectives, plans, approaches, contents, and accomplishments of the system capacity program. The committee will review aviation system capacity needs involving airports, terminal and enroute airspace, technology, automation, and aircraft noise. The functions of the Committee are solely advisory.

The Secretary of Transportation has determined that the information and use of the Committee are necessary in the public interest in connection with the performance of duties imposed on FAA by law. Meetings of the Committee will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: The Office of System Capacity and Requirements (ASC), 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3310.

Edward T. Harris,

Director of System Capacity and Requirements.

[FR Doc. 92–25990 Filed 10–26–92; 8:45 am]

BILLING CODE 4910–13–M

Sacramento Metropolitan Airport, Sacramento, CA; Notice of Intent To Rule

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent To Rule on application to impose and use the revenue from a Passenger Facility Charge (PFC) at Sacramento Metropolitan Airport, Sacramento, California.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sacramento Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and (14 CFR part 158).

On October 5, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Sacramento was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 13, 1993.

DATES: Comments must be received on or before November 27, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA. 90009 or San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Mr. Thomas P. Engel, Director of Airports, County of Sacramento, at the following address: 6900 Airport Boulevard, Sacramento, California 95837. Comments from air carriers and foreign air carriers may be in the same form as provided to the County of Sacramento under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010-1303, Telephone: (415) 876-2805. The applications may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application:

Level of proposed PFC: $3.00.

Proposed charge effective date: January 1, 1993.

Proposed charge expiration date: June 30, 1996.

Total estimated PFC revenue: $24,530,000.00.

Brief description of proposed project:

Rehabilitation of Terminals 1 and 2, Overlay Runway 16L-34R and In-Pavement Lighting, Runway 16L-34R Pavement Reconstruction, Overlay Runway 16R-34L, Aircraft Rescue and Firefighting (ARFF) Vehicle Replacement, Pavement Vacuum Sweeper, West Terminal Apron Repair, Rehabilitation of Existing Terminal Apron, Existing Terminals Aircraft Loading Bridges, Security Systems Expansion (Card Access/CCTV), Electrical Supply/Distribution Master Plan, Wastewater Master Plan Update, Water Supply Master Plan, Reconstruct Electrical Vault. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Availability of Application: Any person may inspect the application in person at the FAA office listed above. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Sacramento.

Issued in Hawthorne, California, on October 7, 1992.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 92-25991 Filed 10-26-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 93-103]

Revocation of the Commercial Gauger Approval of William C. Brann of Bacliff, TX

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the revocation of the approval of a commercial gauger.

SUMMARY: A recent examination of Mr. William C. Brann's gauging business by the U.S. Customs Service has shown Mr. Brann to be in violation of his Commercial Gauger Agreement with Customs, including his failure to meet bonding requirements. Accordingly, pursuant to § 151.13, Customs Regulations (19 CFR 151.13), the commercial gauger approval granted to William C. Brann of Bacliff, Texas has been revoked, with prejudice.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, room 7113, 1301 Constitution Avenue NW., Washington, DC 20229 (202) 927-1060.

Dated: October 20, 1992.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 92-26010 Filed 10-26-92; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 92-102]

Revocation of the Commercial Gauger Approval of Capt. W.A. Walls, Inc., of Corpus Christi, TX

October 20, 1992.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the revocation of the approval of a commercial gauger.

SUMMARY: A recent examination of Capt. W.A. Walls, Inc., by the U.S. Customs Service has shown the company to be in violation of its Commercial Gauger Agreement with Customs, including a failure to meet bonding requirements. Accordingly, pursuant to section 151.13, Customs Regulations (19 CFR 151.13), the commercial gauger approval granted to Capt. W.A. Walls, Inc., of Corpus Christi, Texas has been revoked, with prejudice.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, room 7113, 1301 Constitution Avenue NW., Washington, DC 20229 (202-927-1060).

Dated: October 20, 1992.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 92-26009 Filed 10-26-92; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 92-101]

Revocation of the Commercial Gauger Approval of Tucker Inspections, Inc.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the Revocation of the Approval of a Commercial Gauger.

SUMMARY: A recent examination of Tucker Inspections, Inc., by the U.S. Customs Service has shown the company to be in violation of its Commercial Gauger Agreement with Customs, including a failure to meet bonding requirements. Accordingly, pursuant to § 151.13, Customs Regulations (19 CFR 151.13), the commercial gauger approval granted to Tucker Inspections, Inc., of Channelview, Texas has been revoked, with prejudice.

FFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, room 7113, 1301 Constitution Avenue NW., Washington, DC 20229 (202-927-1060).

Dated: October 20, 1992.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 92-26000 Filed 10-26-92; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be

used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (1 TFM 6–8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 4 percent for calendar year 1993.

DATES: The rate will be in effect for the period beginning on January 1, 1993 and ending on December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Review and Evaluation Division (Financial Evaluation Branch), Financial Management Service, Department of the Treasury, 401 14th Street, SW, Washington, DC 20227 (Telephone: (202) 874–6630).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Public Law 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 1993 reflects the average investment rates for the 12-month period ended September 30, 1992.

Dated: October 21, 1992.

Larry D. Stout,

Assistant Commissioner, Federal Finance.

[FR Doc. 92–25931 Filed 10–26–92; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1992 Rev., Supp. No. 4]

Surety Companies Acceptable on Federal Bonds Correction; Cumis Insurance Society, Inc.

The underwriting limitation for Cumis Insurance Society, Inc. was listed in error in the Treasury Department Circular 570, July 1, 1992 revision at 57 FR 29368 as $2,558,000. The underwriting limitation, effective July 1, 1992, is hereby corrected to read $11,720,000.

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1992 Revision, at 57 FR 29368 to reflect this correction.

Questions concerning this Notice may be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–7102.

Dated: October 21, 1992.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92–26046 Filed 10–26–92; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a three-year extension of an information collection entitled "University Affiliations Program," under OMB control number 3116–0179. Estimated burden hours per response is thirty hours.

DATE: Comments are due on or before November 27, 1992.

COPIES: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 619–5503; and OMB review: Ms. Lin Liu, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average thirty hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: University Affiliations Program.

Form Number: None.

Abstract: Under the University Affiliations Program, USIA offers grants-in-aid to support the development or enhancement of institutional partnership between U.S. and foreign colleges and universities. The program promotes mutual understanding, strengthens research and teaching capabilities, and improves or expands the academic offerings of the institutions involved.

Proposed Frequency of Responses: No. of Respondents—130, Recordkeeping Hours—540, Total Annual Burden—4440.

Dated: October 22, 1992.

Rose Royal,

Federal Register Liaison.

[FR Doc. 92–26035 Filed 10–26–92; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 3121, will be held on November 8, 9, and 10, 1992, in Washington, DC. The committee will meet from 10 a.m. to 3:30 p.m. on November 8, 1992, from 9 a.m. to 4:30 p.m. on November 9, 1992, and from 8:30 a.m. to 12 noon on November 10, 1992. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary. The meeting will be open to the public up to the seating capacity of the meeting room. Due to changes in the location of

the meeting area each day, it will be necessary for those wishing to attend to contact Theresa Boyd at (202) 233–6493 prior to November 4, 1992. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days of the meeting. Oral statements will be heard at 3:30 p.m. on November 9, 1992, in room 1105, VA Techworld Offices, 801 I Street, NE., Washington, DC.

By direction of the Acting Secretary:

Dated: October 16, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–25925 Filed 10–26–92; 8:45 am]

BILLING CODE 8320–01–M

Secretary's Educational Assistance Advisory Committee; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Secretary's Educational Assistance Advisory Committee, authorized by 38 U.S.C. 3692, will be held on November 12 and 13, 1992, from 8:30 a.m. to 4:30 p.m. each day. The meeting will take place at The River Inn Hotel, room 105, 924 25th Street, NW., Washington, DC 20037. The purpose of the meeting will be to discuss Veterans Affairs education issues.

The meeting will be open to the public up to the seating capacity of the conference room. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Celia P. Dollarhide, Executive Secretary, Veterans' Education Advisory Committee (phone 202–233–2152) prior to November 10, 1992.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 10 a.m. on November 13, 1992.

Dated: October 14, 1992.

By direction of the Acting Secretary:

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–25926 Filed 10–26–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 208
Tuesday, October 27, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, November 5, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Quarterly Review, 4th quarter, FY 1992.

Application for designation as a contract market in MidAm U.S. Dollar Composite Index options/MidAmerica Commodity Exchange, Inc.

Application for designation as a contract market in Zero Coupon Treasury Bond options/Chicago Board of Trade.

Application for designation as a contract market in Zero Coupon Treasury Note options/Chicago Board of Trade.

Applications for designation as a contract market in Medium Term U.S. Treasury Note futures and options/MidAmerica Commodity Exchange, Inc.

Application for designation as a contract market in Three Month Eurodollar Time Deposit options/MidAmerica Commodity Exchange, Inc.

Proposed Rules to Exempt Swap Agreements.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–26162 Filed 10–23–92; 3:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Thursday, November 5, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–26163 Filed 10–23–92; 3:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:15 a.m., Thursday, November 5, 1992.

PLACE: 2033 K St., NW, Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–26164 Filed 10–23–92; 3:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Thursday, November 5, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–26165 Filed 10–23–92; 3:07 pm]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 2, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of telecommunications equipment within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–26138 Filed 10–23–92; 2:44 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Record of Vote of Meeting Closure

(Public Law 94–409) (5 U.S.C. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine-thirty a.m. on Tuesday, October 20, 1992 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about twelve-thirty p.m. The purpose of the meeting was to decide eleven appeals from National Commissioners' decisions pursuant to 28 C.F.R. Section 2.27. Six Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., Victor M.F. Reyes, and John R. Simpson.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: October 22, 1992.

Edward F. Reilly, Jr.,

U.S. Parole Commission.

[FR Doc. 92–26128 Filed 10–23–92; 2:42 pm]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 26, November 2, 9, and 16, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 26

Tuesday, October 27

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on "Licenses and Radiation Safety Requirements for Irradiators" (Tentative)
b. Final Rule, 10 CFR Part 20, "Disposal of Waste Oil by Incineration"—Response to Petition for Rulemaking from Edison Electric Institute and the Utility Nuclear Waste Management Group

Week of November 2—Tentative

Monday, November 2

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on Organizational Conflicts of Interest (Tentative)
b. Randall C. Orem, D.O.—Atomic Safety and Licensing Board Memorandum and Order Approving of Settlement Agreement and Terminating Proceeding (LBP–92–18, Docket No. 30–31758–EA) (Tentative)

Week of November 9—Tentative

Friday, November 13

10:00 a.m.
Briefing on Regulatory Oversight of Materials Program (Public Meeting)
(Contact: John Greeves, 301–504–3334)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Current Reactor Technical Issues, e.g., Thermo-Lag Barriers and Reactor Water Level Indicators (Public Meeting)
(Contact: Ashok Thadani, 301–504–2884)

Week of November 16—Tentative

Friday, November 20

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING)—(301) 504–1292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: October 22, 1992.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 92–26096 Filed 10–23–92; 12:45 pm]

BILLING CODE 7590–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 17, 1992.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in—

Phillips 66 Company,
Oil, Chemical and Atomic Workers International Union, and its Local 4–227 and 2–578
OSHRC Docket No. 90–1549
and
Oil, Chemical and Atomic Workers International Union, and its Local 4–786
OSHRC Docket No. 91–3349

CONTACT PERSON FOR MORE INFORMATION: Patrick Moran, (202) 634–4015.

Dated: October 22, 1992.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 92–26080 Filed 10–22–92; 4:53 pm]

BILLING CODE 7600–01–M

federal register

Tuesday
October 27, 1992

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135
Exit Seating; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25821; Amendment Nos. 121-232 and 135-45]

RIN 2120-AE22

Exit Seating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule and request for comments.

SUMMARY: The FAA is amending the exit row seating rule to: (1) Replace the term "exit row seat" with the term "exit seat," to clarify that the rule only affects seats that provide direct access to an exit and seats in rows through which passengers must pass to use an exit; (2) prohibit a passenger from sitting in an exit seat if the passenger cannot read, speak, or understand the primary language in which emergency oral commands are given by the crew; (3) require that passenger information cards notify passengers of this prohibition in all of the languages used on the card for more general evacuation information; (4) remove the requirement that exit seat information on passenger information cards be in each language used on the card for more general evacuation information; and (5) prohibit taxi or pushback until a crewmember has verified that no exit is occupied by a person the crewmember determines is unable to perform those functions required in the event of an emergency in which a crewmember is not available to assist. These actions are necessary to relieve burdens on both passengers and operators caused by the restriction of more seats than is necessary in the interest of safety, to ensure that passengers who cannot respond to emergency commands are not seated in exit rows, and to remove unnecessarily burdensome and possibly misleading language requirements for passenger information cards.

DATES: Effective October 27, 1992. Comment by December 28, 1992.

ADDRESSES: Comments on this amendment may be mailed in duplicate to the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25821, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Donell Pollard Regulations Branch, AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

The Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment, after issuance, for regulations issued without prior notice. Accordingly, interested persons are invited to comment on this final amendment by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and should be submitted in duplicate to the address above. All comments will be available in the Rules Docket for examination by interested parties. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25821." The postcard will be date stamped and mailed to the commenter.

Background

On March 2, 1990, the FAA adopted Amendment Nos. 121-214 and 135-36, which revised §§ 121.585 and 135.129 of the Federal Aviation Regulations to increase the chances of occupant survival following a crash. These sections provide that certificate holders operating aircraft affected by those sections (except on-demand air taxis with nine or fewer passenger seats) may not seat a passenger in an exit row seat who is not able and willing, without assistance, to activate an emergency exit and to take certain additional actions needed to ensure safe use of the exit in an emergency in which a crewmember is not available to perform those functions.

Based on further review, the FAA has determined that the term "most direct access" used in the definition of an exit row has led to confusion and to the designation of many more seats than were intended to be covered by the rule. Several certificate holders have brought to the attention of the FAA that literal application of the rule results in designating seats that need not be affected by the rule in the interest of safety, which, consequently, also reduces the seats available to handicapped persons. Rows have been designated as exit rows when some seats in those rows could not really be considered to have "direct access" because passengers in those seats would have to enter an aisle or pass around an obstruction to get from the seats to the exit. The rule was actually intended to cover only seats in rows through which passengers have to pass to use an exit and individual seats, in other rows, that have direct access to an exit. The rule is amended to clarify this intent.

For example, under the current rule, an unnecessary seating restriction can occur when a portion of a row adjacent to a floor level exit is behind a partition. Because the end seat in the row has direct access to the exit, the entire row must be designated as exit row seats. In some configurations involving a row of two seats adjacent to a floor level exit, one seat is behind a partition. The occupant of that seat does not have direct access to the exit and is no more likely to be the first passenger at the exit in the event of an emergency, even if the adjacent seat is unoccupied, than is a passenger in a nearby aisle seat that does not have direct access to the exit. Further, a passenger in the seat behind the partition is no more likely to impede access to the exit, by reason of a handicapping condition, than if he or she were occupying a nearby aisle seat to which the rule does not apply. Thus, it is not necessary, in the interest of safety, to restrict seating in the seat behind the partition in such a situation (for example, seat A is figure 1). The rule is amended accordingly to replace the definition of an exit row with a definition of an exit seat, and to make the role applicable only to those seats that meet the definition. This amendment thus relieves an unnecessary restriction by clarifying the rule without detracting from that intent.

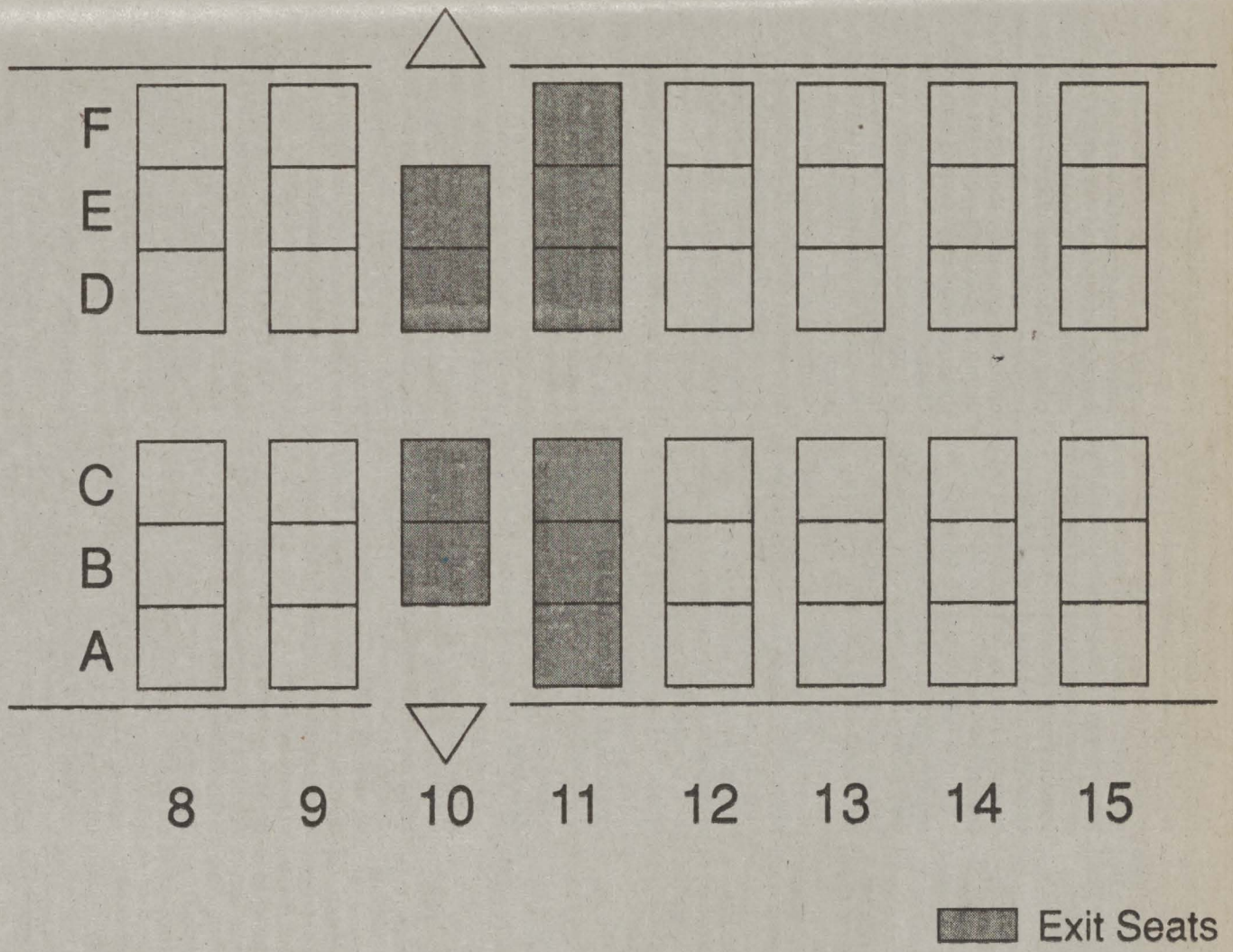
The definition of an exit row also fails to describe adequately the seats that must be designated to meet the intent of the rule for some aircraft passenger seating configurations. For instance, some aircraft have an open space approximately the width of a passenger seat between an exit and the first seat in a row having direct access to the exit. Because, by its terms, the rule adopted by Amendment Nos. 121-214 and 135-36 applied to all seats in the row from the fuselage to the first aisle inboard, it was not clear whether the rule applied to the row having the open space or to the nearest row having a seat against the fuselage. The applicability of the rule is clarified by revising the rule so that it applies to all the seats in the row

through which passengers must pass to use the exit, whether or not the first seat inboard of the exit is at the fuselage. (See figure 2.) In this configuration, the seats in the row behind the row with the inboard seat removed also would be exit row seats because they have direct access to the exit.

BILLING CODE 4910-13-M

Floor Level
Emergency
Row 1
Exit Seats
Partition
A
B
C
D
Row 1
Row 2
Floor Level
Airstair
Row 1

Figure 1



BILLING CODE 4910-13-C

Figure 2

In addition, the rule is being amended to clarify that a certificate holder is required to designate the seats to which the rules applies in each passenger seating configuration in its fleet. Such designation is considered an integral part of the procedures required by the regulation.

The current requirement in the rule that persons seated in exit rows must be able to understand commands given in English may not be appropriate when certificate holders have operations conducted entirely within a foreign country. When this is the case, English may not be the primary language of the crew. Therefore, to meet the safety objectives of §§ 121.585 and 135.139, the rule should require that passengers seated in exit seats be able to understand the primary language the crew will use in an emergency to give oral commands. To effect this change in the rules, the words "in the English language" have been deleted from paragraph (b)(3) of §§ 121.385 and 135.129.

Furthermore, as adopted, the rule allows passenger information cards to be handwritten. The FAA has determined that virtually no certificate holders have handwritten passenger information cards. Moreover, handwritten material cannot be relied upon to be legible enough to convey the necessary safety information. Therefore, the amendments also delete the word "handwritten" from paragraph (b)(3).

In accordance with the rule, passenger information cards contain a list of the selection criteria for persons who sit in exit seats, instructions for the functions they may have to perform, and reseating criteria. Under the current rules, this information must be in all the languages in which other information on the card is presented. The FAA has determined that requirement is unnecessarily burdensome for the carrier and may result in a safety hazard that was overlooked when the rule was issued. The hazard is that listing this information in multiple languages may induce a person to remain in an exit seat when, although that person can perform the functions as described in his or her language, he or she would not be able to understand emergency oral commands issued by a crewmember.

The FAA has determined that the appropriate remedy for this problem is to (1) require a message on the information cards, in all the languages used on the card, that requests passengers in exit rows to identify themselves if they cannot read, speak, and understand the specified language (indicated by the card) to be used by the crew in emergencies; and (2) have the remaining information required by the rule in only the language used for emergency oral commands. This action will avoid the problem of having a passenger in an exit seat even though he or she would not understand the crew in an emergency. It also will relieve certificate holders of the expense and burden of printing that information in multiple languages.

Finally, the FAA has modified the requirement that no certificate holder may allow all passenger entry doors to be closed in preparation for a taxi or pushback unless a crewmember has verified that no unqualified person occupies an exit seat. This action does not preclude passenger verification prior to door closure; however, it allows the carrier flexibility to close the entry door in response to environmental concerns, such as noise and weather conditions, before making the exit seat verification.

The amendments adopted herein revise §§ 121.585 and 135.129 accordingly.

Reasons for No Notice and Immediate Adoption

These amendments are being adopted without notice and comment because it would be contrary to the public interest to follow notice and comment procedures with regard to: (1) Clarifying the definition because the existing definition is susceptible to confusing interpretations that restrict the number of seats available to handicapped persons with no benefit to safety; (2) requiring exit seat passengers to read, speak, and understand the primary language used by the crew to give emergency oral commands because the present requirement that exit seat passengers read, speak, and understand English could result in miscommunication in an emergency; (3) and (4), respectively, revising passenger information cards to notify in all languages the exit seat passengers of the requirement to read, speak, and understand the primary language of the crew, and revising the passenger information cards to limit the seating criteria and emergency instructions to the language of the crew, to reduce the possibility that a person unable to understand that language might occupy an exit seat.

Since the other minor technical changes involving closing the passenger entry doors relieves an unnecessary burden without adversely affecting safety or altering the intent of the rule, notice and public comment procedures on it are unnecessary.

Regulatory Evaluation

The FAA has determined that the expected economic impacts of the amendments are minimal and do not warrant a full regulatory evaluation. The amendments will impose negligible costs and are beneficial in that they (1) relieve a burden on passengers and operators caused by the current definition of exit row seats; (2) ensure that passengers who cannot respond to emergency commands are not seated in exit rows; and (3) remove unnecessarily burdensome and possibly misleading language requirements from passenger information cards. These revisions do not increase the benefits intended and assessed at the time of the original amendment. They merely ensure that these benefits are obtained and that undue burden on the public and on air carriers is avoided.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule is expected to have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has determined that the expected economic impact of the amendments are minimal and do not warrant a Regulatory Flexibility Analysis. The amendments are not expected to have a significant economic impact, positive or negative, on a substantial number of small entities.

International Trade Impact Statement

These amendments are expected to have no impact on trade opportunities for U.S. operators doing business in foreign markets or foreign operators doing business in the United States.

Federalism Implications

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

These amendments will clarify the rule so as to eliminate unnecessary burdens on the air carrier industry and its passengers and to avoid an unanticipated safety hazard. Since no cost will be involved in complying with these revisions, the FAA has determined that these amendments involve a regulation which is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this same reason, it is certified under the criteria of the Regulatory Flexibility Act that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. The FAA has determined that the expected impact of the amendments is so minimal that it does not warrant a full regulatory evaluation.

List of Subjects

14 CFR Part 121

Air safety, Air transportation, Aviation safety, Safety, Transportation.

14 CFR Part 135

Air safety, Air carriers, Air transportation, Aircraft, Airplanes, Aviation safety, Handicapped, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 121 and 135 of the Federal Aviation Regulations (14 CFR parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 121.585 is amended by removing (j) and revising the heading and paragraphs (a), (b)(3), (c), (d), introductory text, (e)(1), (e)(2), (f), (g), (k), (l), (m)(1), (m)(2), and (n)(1)(iii) to read as follows:

§ 121.585 Exit seating.

(a)(1) Each certificate holder shall determine, to the extent necessary to perform the applicable functions of paragraph (d) of this section, the suitability of each person it permits to occupy an exit seat, in accordance with this section. For the purpose of this section—

(i) *Exit seat* means—

(A) Each seat having direct access to an exit; and,

(B) Each seat in a row of seats through which passengers would have to pass to gain access to an exit, from the first seat inboard of the exit to the first aisle inboard of the exit.

(ii) A passenger seat having "direct access" means a seat from which a passenger can proceed directly to the exit without entering an aisle or passing around an obstruction.

(2) Each certificate holder shall make the passenger exit seating determinations required by this paragraph in a non-discriminatory manner consistent with the requirements of this section, by persons designated in the certificate holder's required operations manual.

(3) Each certificate holder shall designate the exit seats for each passenger seating configuration in its fleet in accordance with the definitions in this paragraph and submit those designations for approval as part of the procedures required to be submitted for approval under paragraphs (n) and (p) of this section.

(b) * * *

(3) The person lacks the ability to read and understand instructions required by this section and related to emergency evacuation provided by the certificate holder in printed or graphic form or the ability to understand oral crew commands.

* * * * *

(c) Each passenger shall comply with instructions given by a crewmember or other authorized employee of the certificate holder implementing exit seating restrictions established in accordance with this section.

(d) Each certificate holder shall include on passenger information cards, presented in the language in which briefings and oral commands are given by the crew, at each exit seat affected by this section, information that, in the event of an emergency in which a crewmember is not available to assist, a passenger occupying an exit seat may use if called upon to perform the following functions:

* * * * *

(e) Each certificate holder shall include on passenger information cards, at each exit seat—

(1) In the primary language in which emergency commands are given by the crew, the selection criteria set forth in paragraph (b) of this section, and a request that a passenger identify himself or herself to allow reseating if he or she:

(i) Cannot meet the selection criteria set forth in paragraph (b) of this section;

(ii) Has a nondiscernible condition that will prevent him or her from performing the applicable functions listed in paragraph (d) of this section;

(iii) May suffer bodily harm as the result of performing one or more of those functions; or

(iv) Does not wish to perform those functions; and

(2) In each language used by the certificate holder for passenger information cards, a request that a passenger identify himself or herself to allow reseating if he or she lacks the ability to read, speak, or understand the language or the graphic form in which instructions required by this section and related to emergency evacuation are provided by the certificate holder, or the ability to understand the specified language in which crew commands will be given in an emergency.

* * * * *

(g) No certificate holder may allow taxi or pushback unless at least one required crewmember has verified that no exit seat is occupied by a person the crewmember determines is likely to be unable to perform the applicable functions listed in paragraph (d) of this section.

* * * * *

(j) [Removed and Reserved]

(k) In the event a certificate holder determines in accordance with this section that it is likely that a passenger assigned to an exit seat would be unable to perform the functions listed in paragraph (d) of this section or a passenger requests a non-exit seat, the certificate holder shall expeditiously relocate the passenger to a non-exit seat.

(l) In the event of full booking in the non-exit seats and if necessary to accommodate a passenger being relocated from an exit seat, the certificate holder shall move a passenger who is willing and able to assume the evacuation functions that may be required, to an exit seat.

(m) * * *

(1) The passenger refuses to comply with instructions given by a crewmember or other authorized employee of the certificate holder implementing exit seating restrictions established in accordance with this section, or

(2) The only seat that will physically accommodate the person's handicap is an exit seat.

(n) * * *

(1) * * *

(iii) The requirements for airport information, passenger information cards, crewmember verification of appropriate seating in exit seats, passenger briefings, seat assignments, and denial of transportation as set forth in this section;

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

4. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

5. Section 135.129 is amended by removing paragraph (j) and revising the heading and paragraphs (a), (b)(3), (c), (d), introductory text, (e)(1), (e)(2), (f), (g), (k), (l), (m)(1), (m)(2), and (n)(1)(iii) to read as follows:

§ 135.129 Exit seating.

(a)(1) Except for on-demand operations with aircraft having nine or fewer passenger seats, each certificate holder shall determine, to the extent necessary to perform the applicable functions of paragraph (d) of this section, the suitability of each person it permits to occupy an exit seat, in accordance with this section. For the purpose of this section—

(i) *Exit seat* means—

(A) Each seat having direct access to an exit; and,

(B) Each seat in a row of seats through which passengers would have to pass to gain access to an exit, from the first seat inboard of the exit to the first aisle inboard of the exit.

(ii) A passenger seat having "direct access" means a seat from which a passenger can proceed directly to the exit without entering an aisle or passing around an obstruction.

(2) Each certificate holder shall make the passenger exit seating determinations required by this paragraph in a non-discriminatory manner consistent with the requirements of this section, by persons designated in the certificate holder's required operations manual.

(3) Each certificate holder shall designate the exit seats for each passenger seating configuration in its fleet in accordance with the definitions in this paragraph and submit those designations for approval as part of the procedures required to be submitted for approval under paragraphs (n) and (p) of this section.

(b) * * *

(3) The person lacks the ability to read and understand instructions required by this section and related to emergency evacuation provided by the certificate holder in printed or graphic form or the ability to understand oral crew commands.

* * * * *

(c) Each passenger shall comply with instructions given by a crewmember or other authorized employee of the certificate holder implementing exit seating restrictions established in accordance with this section.

(d) Each certificate holder shall include on passenger information cards, presented in the language in which briefings and oral commands are given by the crew, at each exit seat affected by this section, information that, in the event of an emergency in which a crewmember is not available to assist, a passenger occupying an exit seat may use if called upon to perform the following functions:

* * * * *

(e) Each certificate holder shall include on passenger information cards, at each exit seat—

(1) In the primary language in which emergency commands are given by the crew, the selection criteria set forth in paragraph (b) of this section, and a request that a passenger identify himself or herself to allow reseating if he or she—

(i) Cannot meet the selection criteria set forth in paragraph (b) of this section;

(ii) Has a nondiscernible condition that will prevent him or her from performing the applicable functions listed in paragraph (d) of this section;

(iii) May suffer bodily harm as the result of performing one or more of those functions; or

(iv) Does not wish to perform those functions; and,

(2) In each language used by the certificate holder for passenger information cards, a request that a passenger identify himself or herself to allow reseating if he or she lacks the ability to read, speak, or understand the language or the graphic form in which instructions required by this section and related to emergency evacuation are provided by the certificate holder, or the ability to understand the specified language in which crew commands will be given in an emergency;

* * * * *

(g) No certificate holder may allow taxi or pushback unless at least one required crewmember has verified that no exit seat is occupied by a person the crewmember determines is likely to be unable to perform the applicable functions listed in paragraph (d) of this section.

* * * * *

(j) [Removed and Reserved]

(k) In the event a certificate holder determines in accordance with this section that it is likely that a passenger assigned to an exit seat would be unable to perform the functions listed in paragraph (d) of this section or a passenger requests a non-exit seat, the certificate holder shall expeditiously relocate the passenger to a non-exit seat.

(l) In the event of full booking in the non-exit seats and if necessary to accommodate a passenger being relocated from an exit seat, the certificate holder shall move a passenger who is willing and able to assume the evacuation functions that may be required, to an exit seat.

(m) * * *

(1) The passenger refuses to comply with instructions given by a crewmember or other authorized employee of the certificate holder implementing exit seating restrictions established in accordance with this section, or

(2) The only seat that will physically accommodate the person's handicap is an exit seat.

(n) * * *

(1) * * *

(iii) The requirements for airport information, passenger information cards, crewmember verification of appropriate seating in exit seats, passenger briefings, seat assignments, and denial of transportation as set forth in this section;

* * * * *

Issued in Washington, DC, on October 16, 1992.

Thomas C. Richards,

Administrator.

[FR Doc. 92–25610 Filed 10–26–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Tuesday
October 27, 1992

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 135

Exit Seating for On-Demand Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 25821; Notice No. 92-15]

RIN 2120-AE44

Exit Seating for On-Demand Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the exit seat rule to exclude from the applicability of the rule commuter air carrier aircraft having 9 or fewer passenger seats and on-demand air taxi aircraft having 19 or fewer passenger seats. These revisions are intended to relieve air carriers and persons with disabling conditions of unnecessary burdens. They are needed to eliminate requirements that are not necessary for safe expeditious evacuations in the event of an emergency.

DATES: Comments by November 27, 1992.

ADDRESSES: Comments on this amendment may be mailed in duplicate to the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25821, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Regulations Branch, AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone [202] 267-8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and should be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Person's interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Summary of Proposed Rule

The proposed amendment would delete from the coverage of the rule commuter operations with aircraft having 9 or fewer seats and on-demand operations with aircraft having 19 or fewer seats. On-demand operations with aircraft having nine or fewer seats are already excluded from the coverage of the rule. The additional exclusions proposed are needed to prevent situations in which application of the rule restricts the availability of smaller aircraft to handicapped persons with negligible, if any, impact on safety.

Background

On March 2, 1990, the FAA adopted Amendment No. 135-36, which revised § 135.129 of the Federal Aviation Regulations to increase the chances of occupant survival following a crash. The section provides that certificate holders operating aircraft affected by the section (except on-demand air taxis with nine or fewer passenger seats) may not seat a passenger in an exit row seat who is not willing and able, without assistance, to activate an emergency exit and to take certain additional actions needed to ensure safe use of the exit in an emergency in which a crewmember is not available to perform those functions.

After further consideration, the FAA has determined that § 135.129 should be amended to exclude from its coverage scheduled commuter aircraft having nine or fewer passenger seats. Certificate holders attempting to comply with the rule in regard to those aircraft have raised several issues concerning application of the rule. First, the limited number of seats in such aircraft increases the likelihood that persons not meeting the criteria in paragraph (b) of the rule could be denied transportation. Such a denial is especially likely in cases where the passenger seating configuration results in most of the seats being designated as exit seats. Persons who do not meet the criteria for exit seating established by § 135.129 would be completely barred from aircraft with passenger seating configurations that result in every seat in the aircraft being designated as an exit seat. Furthermore, due to the limited number of passengers involved, it may not always be possible to find someone willing, and qualified, to move into an exit seat when it must be vacated by an unqualified person. In a fully occupied flight, application of the rule could result in that passenger being denied transportation.

Consideration of such consequences, in view of the objective of the rule and in the light of various seating configurations known to be used in operations to which the rule would apply, indicates that safety does not require these results. The aircraft involved are uniformly quite small, with short distances between exits. Passengers may choose one or another exit without concern for the distance factor. The ratio of exits to passengers in such aircraft is very high in comparison to larger aircraft, thus affording more opportunities for emergency evacuation. The seats in such aircraft are often in single units, around a central open space in the cabin, as opposed to being in rows and aisles, thus providing ready access to window and door exits for all passengers. The exits in such aircraft are typically small, light, and close to the ground, involving no slides, such as those that are found in larger aircraft, thus obviating some of the criteria in paragraph (b) of the rule. In addition, § 135.117 requires that each passenger be briefed orally on the location and means of operation of each passenger entry door and emergency exit.

The FAA has further determined that safety does not require that the rule apply to on-demand air taxis having 19 or fewer passenger seats. Seating configurations is those aircraft tend to be different from the standard aisle and row seating found in aircraft used in commuter operations, and frequently include single units around a central open space in the cabin, couch seats, and club seating, which provide numerous undefined, unobstructed paths to the exits. Generally, affinity groups charter these aircraft, and individual seat assignments are not made.

Passengers using these aircraft who travel in affinity groups are more likely to be aware of each other's physical condition than is the case when the passengers are drawn from the general population mix. And, as is the case in all operations under part 135, § 135.117 requires that each passenger receive an oral briefing on the location and means of operation of each passenger entry door and emergency exit.

Regulatory Evaluation

The FAA has determined that the expected economic impact of the amendment would be minimal and does not warrant a full regulatory evaluation. As indicated in the above discussion, the exclusion of commuter air carrier aircraft having nine or fewer passenger seats and of on-demand air taxi aircraft having 19 or fewer passenger seats from the rule is not expected to result in significant impediments to successful emergency evaluations. This conclusion is based on a review of the typical passenger configurations and exit availability of these smaller aircraft. The FAA did not give adequate consideration to the unique characteristics of these aircraft and their operations at the time it prepared the regulatory evaluation of Amendment 135.36.

The amendment is beneficial in that it would prevent situations in which smaller aircraft might otherwise be restricted from carrying handicapped persons; this benefit is unquantifiable.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule is expected to have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has determined that the expected economic impact of the amendment is minimal and does not warrant a Regulatory Flexibility Analysis. The amendment is not expected to have a significant economic impact, either positive or negative, on a substantial number of small entities.

International Trade Impact Statement

These amendments are expected to have no impact on trade opportunities for U.S. operators doing business in foreign markets or foreign operators doing business in the United States.

Federalism Implications

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

For the reasons set out in this preamble, the FAA has determined that this amendment involves a regulation which is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this same reason, it is certified under the criteria of the Regulatory Flexibility Act that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. The FAA has determined that the expected impact of the amendment is so minimal that it does not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 135

Air safety, Air carriers, Air transportation, Aircraft, Airplanes, Aviation safety, Handicapped, Safety, Transportation.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend part 135 of the Federal Aviation Regulations (14 CFR part 135) as follows:

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

2. Section 135.129 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 135.129 Exit seating.

(a)(1) Except for on-demand operations with aircraft having 19 or fewer passenger seats and commuter operations with aircraft having nine or fewer passenger seats, each certificate holder shall determine, to the extent necessary to perform the applicable functions of paragraph (d) of this section, the suitability of each person it permits to occupy an exit seat. For the purpose of this section—

* * * * *

Issued in Washington, DC, on October 16, 1992.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 92-25604 Filed 10-26-92; 8:45 am]

BILLING CODE 4910-13-M

federal register

Tuesday
October 27, 1992

Part IV

Department of Transportation

Coast Guard

46 CFR Part 28

Commercial Fishing Industry Vessel Regulations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD 88-079a]

RIN 2115-AD12

Commercial Fishing Industry Vessel Regulations

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations for U.S. Commercial Fishing Industry Vessels on topics that were separated from the final rules, published in the **Federal Register** on August 14, 1991 (56 FR 40364). These topics generated the most public concern and were separated from the Final Rules in order for them to be adequately addressed. These topics include: stability for fishing vessels less than 79 feet in length; requirements for survival craft on fishing vessels carrying less than four individuals on board, operating within 12 miles of the Coastline and outside the Boundary Line; and administration of exemptions authorized by 46 U.S.C. 4506 in relationship to high vessel density and limited duration fisheries.

Additionally, these proposed regulations address four other topics, two of which were specifically mentioned in the preamble to the Final Rule as topics that would be addressed in this supplemental rulemaking. The additional topics addressed are: the Aleutian Trade Act; acceptance criteria for instructors and course curricula; termination of unsafe operations; and stability for Load Line assignment.

These proposed regulations are intended to improve the overall safety of commercial fishing industry vessels.

DATES: Comments must be received on or before December 28, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 88-079a), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477 for further information.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters. A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at Room 1308 U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Tim Skuby, Office of Marine Safety, Security and Environmental Protection (G-MVI-4), room 1405, U.S. Coast Guard Headquarters, Washington, DC 20593-0001, (202) 267-2307.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 88-079a) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Public Hearings

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES**." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Tim Skuby, Office of Marine Safety, Security and Environmental Protection and Lieutenant Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Background and Purpose

Commercial Fishing Industry Vessel Safety Act of 1988

On September 9, 1988, title 46 United States Code (U.S.C.), was amended in chapter 45 (Uninspected Commerical Fishing Industry Vessels, Sections 4501 through 4508) by the Commerical Fishing Industry Vessel Safety Act of 1988, Public Law 100-424 ("the Act"). This chapter, as amended, is applicable to all U.S. uninspected commercial fishing vessels, fish processing vessels, and fish tender vessels. Fish processing vessels of more than 5,000 gross tons and fish tender vessels of more than 500 gross tons are not affected, since they are subject to inspection under 46 U.S.C. 3301(11) and (12). Also, it does not apply to vessels engaged solely in sport fishing that are subject to inspection under 46 U.S.C. 3301(8) as small passenger vessels and are regulated under 46 CFR subchapter T, or to vessels carrying 6 or less passengers which operate as uninspected passenger vessels regulated under 46 CFR subchapter C. Vessels that alternate between commercial and sport fishing must comply with the requirements for the service in which are engaged.

The Act requires the Secretary of Transportation to prescribe regulations for certain safety equipment and vessel operating procedures. The Act also requires the reporting of casualties to commercial fishing industry vessels by insurers, reporting of injuries by seamen on board commercial fishing industry vessels, and collection of casualty information by the Secretary.

The Act calls for regulations concerning the following equipment:

1. *For all vessels. The regulations developed for this class of vessels should concern:*

(a) Fire extinguishing equipment.
(b) Life preservers.
(c) Backfire flame arrestors for gasoline engines.
(d) Ventilation of enclosed spaces.
(e) Visual distress signals.
(f) Buoyant apparatus.
(g) Alerting and locating equipment, including emergency position indicating radio beacons (EPIRBs).
(h) Placards informing seamen of the duty to report injuries.

2. *For vessels which are documented and operate beyond the Boundary Lines described in 46 CFR part 7 or are documented and operated with more than 16 individuals on board. The regulations developed for this class of vessels should also concern:*

(a) Alerting and locating equipment including, EPIRBs.
(b) Lifeboats or liferafts.
(c) An immersion suit for each individual on board.
(d) Radio communication equipment.
(e) Navigation equipment including compasses, radar reflectors, nautical charts, and anchors.
(f) First aid equipment.
(g) Any other equipment required to minimize the risk of injury.

3. *For vessels which are built after, or which undergo a major conversion completed after, the effective date of the regulations and operate with more than 16 individuals on board. The regulations*

developed for this class of vessels should also concern:

(a) Navigation equipment, including radars and fathometers.
(b) Life saving equipment, immersion suits, signaling devices, bilge alarms, bilge pumps, life rails, and grab rails.
(c) Fire protection and firefighting equipment.
(d) Use and installation of insulation material.
(e) Storage of flammable and combustible material.
(f) Fuel, ventilation, and electrical equipment.

The Act also addresses a major operational problem encountered by commercial fishing industry vessels by requiring regulations for operational stability. The Act states that those regulations are to apply to all vessels which are built, or which are substantially altered in a manner that affects operational stability, after December 31, 1989.

The Act requires that in the regulations the Coast Guard—

(1) Consider the specialized nature and economics of the operations and the character, design, and construction of commercial fishing industry vessels; and

(2) Not require the alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulations.

Concern for the size and complexity of fish processing vessels is recognized by the Act. All fish processing vessels are to be examined at least once every two years to ensure compliance with the regulations developed in response to the Act. Further, fish processing vessels which are built after, or which undergo a major conversion completed after, July 27, 1990, must meet the survey requirements of, and be classed by, the American Bureau of Shipping or another similarly qualified organization accepted by the Coast Guard for that purpose.

Advance Notice of Proposed Rulemaking

An Advance Notice of Proposed Rulemaking (ANPRM) was published in the **Federal Register** on December 29, 1988 (53 FR 52735), addressing potential requirements for uninspected fishing, fish processing, and fish tender vessels. In response to that ANPRM nearly 200 comment letters were received. Each of the comment letters was considered in developing the Notice of Proposed Rulemaking (NPRM).

Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on April 19, 1990 (55 FR 14924), addressing proposed requirements for uninspected fishing, fish processing, and fish tender vessels. In response to that NPRM, nearly 500 comment letters were received. Due to the numerous comment letters and the comments presented at the public hearings concerning application of the proposed requirements to fishing vessels less than 79 feet (24 meters) in length, a notice of intent to publish a Supplemental Notice of Proposed Rulemaking (SNPRM) appeared in the **Federal Register** on August 30, 1990 (55 FR 35694). Each of the comment letters was considered in developing the Final Rules that were published in the **Federal Register** on August 14, 1991 (56 FR 40364) and this SNPRM.

The Aleutian Trade Act of 1990

On November 16, 1990, the President signed Pub. L. 101–595, The Aleutian Trade Act of 1990 ("the ATA"). The ATA provides for continued cargo service to remote communities in Alaska while ensuring increased safety standards for fish tender vessels operating in the Aleutian trade. "Aleutian trade" is defined as the transportation of cargo (including fishery related products) for hire on board a fish tender vessel to or from a place in Alaska west of 153° West longitude and east of 172° East longitude, if that place receives weekly common carrier service by water, to or from a place in the United States (except a place in Alaska).

In general terms, a fish tender vessel may be engaged in carrying cargo. If the service is only to remote places that do not receive regular cargo vessel service, then these vessels need only meet the applicable requirements imposed under the CFIVSA (46 U.S.C. 4502 (a) & (b)) and need not meet any inspection, construction, manning, or loadline requirements. If a fish tender vessel carrying cargo competes with a weekly cargo vessel service in the Aleutian Trade, it must meet the safety standards in 46 U.S.C. 4502 (a), (b), and (c) in addition to the applicable inspection, manning, and loadline requirements.

The ATA also provided for a transition period for certain fish tender vessels already in, or committed to, service in the Aleutian trade. These "qualified vessels" are those engaged in the Aleutian trade which entered the Aleutian trade before September 8, 1990 or were purchased before September 8, 1990 to be used in the Aleutian trade and enter into such service before June 1, 1992. Further, these vessels must not have undergone a major conversion. A detailed explanation of the ATA and its relationship to other marine safety laws and regulations follows. The Coast Guard has identified a firm number of "qualified vessels" that are affected by the transition period.

The ATA amends certain provisions of the Commercial Fishing Industry Vessel Safety Act of 1988. The amendments require fish tender vessels in the Aleutian trade to be subject to the provisions of 46 U.S.C. 4502(b), the same as documented fishing industry vessels which operate beyond the Boundary Lines or which operate with more than 16 individuals on board. It is unlikely that this amendment will affect any "qualified vessel" currently in the Aleutian Trade. They are documented vessels that necessarily cross the Boundary Lines defined in 46 CFR part 7 during each voyage and are already subject to 46 U.S.C. 4502(b).

The ATA also amends 46 U.S.C. 4502(c) to treat fish tender vessels in the Aleutian trade in a similar manner as vessels which are built or complete a major conversion after December 31, 1988, and which operate with more than 16 individuals on board. These vessels may be required to meet additional safety standards. The regulations developed in response to 46 U.S.C. 4502(c) are contained in 46 CFR part 28, subpart D. Inasmuch as 46 U.S.C. 4502(c) continues to state that the Secretary *may* (emphasis added) prescribe regulations, the Coast Guard's position is that Congress intended for the Coast Guard to decide whether these standards are appropriate for fish tender vessels in the Aleutian trade.

It should be noted that a conflict exists concerning 46 U.S.C. 4502(e)(2), which states that the Secretary may not require the alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulation. One interpretation is that since the ATA did not amend 46 U.S.C. 4502(e), this section should not apply to the "qualified vessels".

Another interpretation is that it was Congress' intent to upgrade the safety of all fish tender vessels operating in the Aleutian trade to a level equivalent to vessels carrying cargo for hire in the Aleutians. Thus, under this interpretation, the intent of the ATA was to require all new and existing fish tender vessels engaged in the Aleutian trade to meet the safety standards under 46 U.S.C. 4502(c). This interpretation further supposes that since Congress provided a delayed implementation period, until January 1, 1993, for the "qualified vessels", that it was clearly their intent to require these vessels to

make alterations and modifications in order to comply with the regulations. This is the Coast Guard's position.

The Coast Guard is proposing to apply the provisions of the existing standards in 46 CFR part 28, subpart D, to fish tender vessels in the Aleutian trade. Under this delayed implementation provision it is clear that the "qualified vessels" would not be subject to the regulations of 46 CFR part 28, subpart D until at least January 1, 1993. It should also be noted that a fish tender vessel which is not one of the "qualified vessels" would have to comply with subpart D, as proposed in this rulemaking, at the time of entering the Aleutian trade, or on the effective date of the final rule, if later.

In order for these vessels to comply with the requirements in 46 CFR part 28, subpart D, possible retrofits would be required in the following areas: Launching of survival craft (§ 28.310); Fire pumps, fire mains, fire hydrants, and fire hoses (§ 28.315); Fixed gas fire extinguishing systems (§ 28.320); Fire detection systems (§ 28.325); Galley hood and other fire protection equipment (§ 28.330); Fuel systems (§ 28.335); Main source of electrical power (§ 28.355); Wiring methods and materials (§ 28.370); Emergency source of electrical power (§ 28.375); General structural fire protection (§ 28.380); Embarkation stations (§ 28.395); and Deck rails, lifelines, storm rails, and hand grabs (§ 28.410). Since final rules will probably not be published until shortly before, or even after January 1, 1993, and are expected to impact the "qualified vessels", the Coast Guard is proposing a delayed implementation date. Comments are solicited on whether a one year implementation delay period will permit required retrofits without imposing undue operating constraints and economic hardship. The Coast Guard also requests that specific comments be provided regarding the impact these requirements, as currently written, will have on the industry.

Additionally, the ATA amended certain inspection provisions, load line provisions, and the manning provisions of 46 U.S.C. chapters 33, 51, 73, 81, and 87.

Inspections

Fish tender vessels engaged in the Aleutian trade are also subject to the amended provisions of 46 U.S.C. 4502(f), which requires that they be examined at least once every 2 years for compliance with 46 U.S.C. chapter 45, which includes the rules contained in 46 CFR subchapter C and those proposed here.

With respect to the inspection provisions, 46 U.S.C. 3302(c) was amended by exempting fishing, fish processing, and fish tender vessels of not more than 500 gross tons from consideration as a freight vessel, a seagoing barge, or a seagoing motor vessel under 46 U.S.C. 3301(1), (6), and (7) if, when the vessel transports cargo to or from Alaska, that place does not receive weekly common carrier service by water from a place in the United States; or the cargo is of a type not accepted by that common carrier service; or in the case of a fish tender vessel, the vessel is not engaged in the Aleutian trade.

A "qualified vessel" is exempt from consideration as a freight vessel, a seagoing barge, or a seagoing motor vessel under 46 U.S.C. 3301(1), (6), and (7) if the vessel is not more than 500 gross tons, has an incline test performed by a marine surveyor, and has written stability instructions posted on board. These provisions are effective May 16, 1991.

Loadlines

With respect to the load line provisions, a fish tender vessel of not more than 500 gross tons, engaged in the Aleutian trade, is not subject to 46 U.S.C. chapter 51 if it was constructed, under construction, or under contract to be constructed as a fish tender vessel before January 12, 1980; or was converted for use as a fish tender vessel before January 1, 1983; and is not on a foreign voyage; or is engaged in the Aleutian trade and did not have a load line assigned at any time prior to June 1, 1992.

The requirements in 46 U.S.C. chapter 51 (Loadlines) do not apply to a fish tender vessel engaged in the Aleutian trade until January 1, 2003, if the vessel has not undergone a major conversion and it operated in that trade before September 8, 1990 or was purchased to be used in that trade before June 1, 1992, and it has not had a load line assigned at any time before November 16, 1990.

Manning and Crew Requirements

With respect to the manning provisions, 46 U.S.C. 8104 has been amended to require fish tender vessels that are not more than 500 gross tons and engaged in the Aleutian trade to have the licensed individuals and crew members, when at sea, divided into at least 3 watches. However, if a fish tender vessel of not more than 500 gross tons is one of the "qualified vessels", then the licensed individuals and crew members must, when at sea, be divided into at least 2 watches. These provisions were effective November 16, 1991.

Additionally, the ATA amends 46 U.S.C. 8702 to require fish tender vessels engaged in the Aleutian trade to comply with the crew requirements set out in § 8702, but allowing the percentage of the deck crew, who are required to have merchant mariners' documents endorsed for a rating of at least able seaman, to be reduced from 65 to 50 percent. These provisions were effective November 16, 1991.

Lastly, the ATA amends 46 U.S.C. chapter 73 to allow acceptance of service used by an individual to qualify for an endorsement as an able seaman—fishing industry, as qualifying service toward an endorsement either as an able seaman—unlimited; able seaman—special; or if the service is on board a vessel of at least 100 gross tons, able seaman—limited.

Units of Measure

It is recognized that English units of measure are still the preferred unit used in this country; however, in keeping with the trend to convert to international units, they are also used in this rulemaking. The exception to this is the use of nautical mile, which is universally used in the maritime industry.

Discussion of Comments and Proposed Regulations

Subpart A—General Provisions

Section 28.40 Incorporation by Reference

This section proposes the addition of an industry standard to be incorporated by reference. The corresponding section where this standard would be referenced as the governing requirement is listed. In the interest of keeping the regulations as uncomplicated as possible, the number of standards incorporated by reference has been minimized. Instead, performance type standards have been used extensively.

In July, 1991, the American Society for Testing and Materials (ASTM) published ASTM F-1321-90, "Standard Guide for Conducting A Stability Test (Lightweight Survey and Inclining Experiment) to Determine the Light Ship Displacement and Centers of Gravity of a Vessel." The Coast Guard proposes to incorporate this standard into this rule and it will supersede Navigation and Vessel Inspection Circular No. 15-81 and supplement the information in §§ 28.535 and 170.185.

Section 28.50 Definition of Terms Used in This Part

This section has been amended to include the definitions of "Aleutian trade" and "Especially hazardous

condition". This SNPRM proposes revised regulations as a result of the ATA and a new § 28.65, which addresses termination of unsafe operations. These terms are included here for clarity purposes.

The definitions for "Coast Guard Boarding Officer" and "District Commander" would also be added to this section. The definitions appear in 33 CFR 177.03 and 46 CFR 1.01–05(b) respectively, however, rather than reference another part of the regulations, it is proposed that the definitions be included here for clarity and convenience for both industry and Coast Guard enforcement officials.

Section 28.60 Exemption Letter

This section contains proposed regulations concerning exemptions authorized under 46 U.S.C. 4506. There is a general exemption at 46 U.S.C. 4506(b) for all commercial fishing industry vessels that are less than 36 feet (11 meters) in length that do not operate beyond the Boundary Lines. This exemption permits a commercial fishing industry vessel less than 36 feet (11 meters) in length to operate inside the Boundary Lines without lifeboats or liferafts. This exemption has already been incorporated into § 28.120(h). The Act provides for exemptions at 46 U.S.C. 4506(a) when good cause exists for granting an exemption and when the safety of the vessel and those on board will not be adversely affected. While Congress did provide for exemptions, the intent was not to dilute the Act's safety equipment and operating provisions. The Coast Guard recognizes that there may be some cases where exemptions are warranted, however, these will be the exceptions.

The Coast Guard's position is that due to the specific nature of each fishery, the official best able to handle specific exemption requests under 46 U.S.C. 4506 is the Coast Guard District Commander. The District Commander is familiar with the commercial fishing industry and local conditions within the District, and is in the best position to evaluate requests for exemptions and determine if the safety of the vessel and those on board will be adversely affected by granting the exemption. In the interim period, until these regulations become final, all exemption requests should be submitted in writing to the District Commanders. The requests will be reviewed by the District Commanders and forwarded with a recommendation to Commandant (G–MVI–4) who will then make a final decision on whether to grant or not grant the exemption request.

Exemption requests from specific vessel requirements would be required to be submitted in writing to the District Commander. If granted, the exemption would be accompanied by a letter specifying the terms under which the exemption is granted. This letter would be required to be maintained on the vessel for the term of the exemption.

Exemptions for a class of vessels would also be required to be submitted in writing to the District Commander. If the District Commander grants the exemption it would be for a limited time period and be accompanied by a letter specifying the terms under which the exemption is granted. This letter will be required to be maintained on each vessel in the class exempted.

Section 28.65 Termination of Unsafe Operations

This section proposes criteria for the termination of unsafe operations under 46 U.S.C. 4505. Section 4505 of the Act states that an official authorized to enforce 46 U.S.C. Chapter 45, may direct the individual in charge of a commercial fishing industry vessel to immediately take reasonable steps necessary for the safety of the individuals on board the vessel if the official observes the vessel being operated in an unsafe condition that the official believes creates an especially hazardous condition.

It is the obligation of the owner and the master or individual in charge of the vessel to ensure that the vessel is properly maintained, equipped, and operated at all times. While at sea, the master or individual in charge of the vessel has the responsibility to operate the vessel within the limits of its stability and environmental capabilities. When an enforcement official determines that a hazardous condition exists, the official may direct the master or individual in charge of the vessel to return the vessel to a mooring until the hazardous condition is corrected. Other possible options include, but are not limited to, the following:

1. Immediate correction of the hazardous condition;

2. Filing of a Report of Violation against the owner, master, individual in charge of the vessel; and

3. Referral to the Marine Safety Office or Marine Inspection Office for investigation and possible Suspension and Revocation action against Coast Guard issued licenses.

The Coast Guard realizes that the termination of a commercial operation may have a serious economic impact such as loss of income to the owner and the employees. However, the safety of individuals on board must be the highest priority. Decisions such as these will consider the effects that an operation may have on the safety of the individuals on board. When an operation is considered to be life threatening or to have the possibility of leading to a serious injury, cessation of that operation is warranted.

Subpart B—Requirements for All Vessels

Section 28.120 Survival Craft

Existing Section 28.120(b) exempts a vessel with less than four individuals on board which operates within 12 miles of the coastline from the requirement for survival craft. That exemption was placed in the final rule on an interim basis as discussed in the preamble to that rule. The Coast Guard's intent, in regard to that exemption, was to reduce the initial economic costs for those vessels. It was not the Coast Guard's intent to infer that the total of one, two, or three lives was less important than four or more lives. For this reason, the Coast Guard has decided that the number of individuals on board be eliminated as a limiting criteria. Therefore, the Coast Guard is proposing to remove the exemption in § 28.120(b) and to modify the survival craft tables. The proposed change would require an inflatable buoyant apparatus for a documented vessel 36 feet (11 meters) or more in length or an undocumented vessel 36 feet (11 meters) or more in length with more than 16 individuals on board, operating within 12 miles of the coastline, cold water. A buoyant apparatus would be required for a documented vessel less than 36 feet (11 meters) in length or an undocumented vessel less than 36 feet (11 meters) in length with more than 16 individuals on board, operating within 12 miles of the coastline, cold water. For an undocumented vessel with 16 individuals or fewer on board, regardless of size, operating within 12 miles of the coastline, cold water, a buoyant apparatus would be required. The proposed breakpoint of 36 feet (11 meters) is consistent with the established breakpoint for vessels operating inside the Boundary Line, cold waters; or Lakes, Bays Sounds, cold water; or Rivers, cold water.

The Coast Guard recognizes that the initial economic costs that would be incurred by eliminating the exemption for these vessels in their entirety could result in a cost as high as $4,500 (the estimated cost of an inflatable liferaft). This is a substantial cost to be incurred by these vessels. Therefore, by proposing a more lenient equipment standard, the Coast Guard is addressing

the significant economic issue identified in the Regulatory Evaluation for the Commercial Fishing Industry Vessel Final Rule (CGD 88–079), while still increasing the safety of the industry. The additional cost for these vessels is estimated to be between $500 and $1,400, the estimated cost of a buoyant apparatus and an inflatable buoyant apparatus, respectively.

In addition to removing the above mentioned exemption and modifying the survival craft tables, the Coast Guard proposes another change to the survival craft tables. This change would require commercial fishing industry vessels less than 36 feet (11 meters) in length which operate inside the Boundary Line in cold waters to be required to have at least a buoyant apparatus on board.

Section 46 U.S.C. 4506(b) exempts commercial fishing industry vessels that are less than 36 feet (11 meters) in length and that do not operate beyond the Boundary Lines from 46 U.S.C. 4502(b)(2), which concerns lifeboat and liferaft requirements. The Coast Guard's position is that while these commercial fishing industry vessels are exempt from carrying lifeboats and liferafts, this exemption does not preclude the Coast Guard from requiring some type of survival craft on these commercial fishing industry vessels. Under the authority of 46 USC 4502(a)(6), this section gives the Coast Guard authority to require a buoyant apparatus on any commercial fishing industry vessel.

Several comment letters stated that most of the commercial fishing industry vessels less than 36 feet (11 meters) in length operate approximately 3–4 miles offshore. However, operations inside the Boundary Line can be as far offshore as 12 miles. The Coast Guard's position is that every commercial fishing industry vessel operating in cold water should carry a survival craft. The intent of requiring survival craft is to extend the survival time of individuals who would otherwise be in the water. The Coast Guard's position is that, at a minimum, a buoyant apparatus is necessary on this class of vessel. This is consistent with the cost of the survival craft and the space necessary for storage.

Several comment letters also suggested that individuals operating "day boats" be exempted from any requirement to carry survival craft. "Day boats" traditionally operate during daylight hours only, in groups, in fair weather, and normally inside the Boundary Line. Operating under these parameters, if a commercial fishing industry vessel capsizes for instance, one of the other vessels in the group will provide assistance. They rely on each other and argue that survival craft are not a necessity. The Coast Guard disagrees.

Day boat operations may be relatively safe under ideal conditions. However, if weather conditions worsen, the advantage of day boat operations, such as the proximity of other vessels, may be lost. For this reason, operation of a vessel in cold water without a survival craft on board is considered to be an unnecessary risk.

Subpart C—Requirements for Documented Vessels That Operate Beyond the Boundary Lines or With More Than 16 Individuals on Board, or for Fish Tender Vessels Engaged in the Aleutian Trade

Section 28.200 Applicability

This section describes the revised applicability proposed for this subpart. This section implements 46 U.S.C. 4502(b) of the Act as amended by the ATA. The requirements of this subpart would be in addition to the requirements in 46 CFR part 28, subparts A and B. The requirements would apply to all documented vessels that operate beyond the Boundary Lines; all documented vessels that operate with more than 16 individuals on board; and all fish tender vessels engaged in the Aleutian trade. The Boundary Lines are described in 46 CFR part 7, and the rules for documenting vessels are contained in 46 CFR subchapter G. "Aleutian trade" is defined in 46 CFR 28.50.

Section 28.275 Acceptance Criteria for Instructors and Course Curricula

Section 28.270 requires the master or individual in charge of a commercial fishing industry vessel to ensure that drills are conducted and instruction is given to each individual on board at least once a month and that each individual knows how to respond to certain contingencies. Subparagraph (c) of that section states that no individual may conduct the drills or provide the instruction unless that individual has been "trained in the proper procedures for conducting the activity."

In the preamble to the Final Rule (56 FR 40364, August 14, 1991) the Coast Guard recognized a need to establish standards and procedures for accepting instructors as qualified to conduct drills and perform instruction as required by § 28.270. The Coast Guard is now proposing a procedure for the acceptance of such instructors and curricula which is intended to be administratively efficient and flexible, but effective in ensuring that the Coast Guard accepted instructors, in fact, meet minimum standards of qualification, and the curricula are evaluated for content and consistency.

The Coast Guard proposes to authorize the Officer in Charge, Marine Inspection (OCMI), in whose zone the training and instruction will take place, to issue a letter stating that the addressee is accepted as qualified under § 28.270(c) to conduct the drills and perform the instruction required by § 28.270(a), if the individual submits a written request and provides valid documents establishing the following facts to the OCMI's satisfaction. The individual:

1. Is licensed for operation of inspected vessels of 100 gross tons or more; or

2. Has at least one year (360 days) of underway, seagoing experience as a seaman on a U.S. documented commercial fishing industry vessel within five years prior to submitting the request, has not been denied a Coast Guard license or had a license suspended or revoked, and also meets one of the following criteria:

(a) Has been employed for at least one academic year as an instructor of seamanship, survival at sea, or other maritime safety related subject in a Coast Guard approved training course;

(b) Is certified as an instructor by the Coast Guard Auxiliary;

(c) Is certified as an instructor by the American Red Cross, American Heart Association, or the National Association of Underwater Instructors;

(d) Is certified as a firefighter with special training or unique experience in shipboard firefighting; or

(e) Is certified as a police officer with special training or experience in marine law enforcement; and

3. Has provided to the satisfaction of the OCMI, a detailed course summary outlining the curriculum of contingencies of § 28.270(a) required to be demonstrated, and the methods of instruction to be utilized.

An individual who is not able to qualify as an instructor under the above criteria would be permitted to request Coast Guard acceptance on the basis of documentation which establishes to the OCMI's satisfaction that the individual has received recent, specialized, professional training or experience which relate directly to the contingencies listed in § 28.270(a).

The Coast Guard would issue a letter of acceptance to any qualified individual. Each OCMI would maintain a list of accepted instructors in their zone. Letters of acceptance would be valid for a period of five years. Coast Guard accepted instructors would be permitted to issue documents which

confirm that individuals have received the required instruction.

With regard to the cost impact of establishing a voluntary acceptance program, the Coast Guard anticipates that the cost to qualified individuals will be minimal, involving only the submission of a few documents. The cost to crewmembers of commercial fishing industry vessels who depend upon the services of Coast Guard accepted instructors will vary depending on the instructional methods employed in any particular training program. The Coast Guard anticipates that the number of Coast Guard accepted instructors will be high enough to encourage healthy competition and a wide variety of reasonably priced instructional opportunities.

The Coast Guard invites comments from the public and the industry particularly with respect to the following issues:

(a) Is the proposed list of criteria sufficiently clear and objective to ensure that administration of the program will be fair, efficient, and effective?

(b) Should any other organizations be explicitly recognized as certificating individuals as instructors under item B.3 above?

(c) Should the letter of acceptance be valid only for a limited period, subject to renewal?

Subpart D—Additional Requirements for Certain Vessels

Section 28.300 Applicability

This section describes the revised applicability proposed for this subpart. This section implements 46 U.S.C. 4502(c) of the Act as amended by the ATA. The requirements of this subpart would be in addition to the requirements of 46 CFR part 28, subparts A, B, and C. This subpart would apply to certain vessels as described in paragraphs (a) through (c).

Paragraph (a) includes each commercial fishing industry vessel which has its keel laid or is at a similar stage of construction, or which undergoes a major conversion completed, on or after September 15, 1991 and that operates with more than 16 individuals on board.

Paragraph (b) includes existing fish tender vessels engaged in the Aleutian trade that do not fall into the category described in paragraph (c).

Paragraph (c) provides an exception to the applicability proposed for this subpart in conjunction with the phase-in period for vessels in the Aleutian trade. Paragraph (c) addresses fish tender vessels engaged in the Aleutian trade that:

1. (a) Operated in the Aleutian trade before September 8, 1990; or

(b) Were purchased before September 8, 1990, to be used in the Aleutian trade and enter into the Aleutian trade before June 1, 1992; and

2. Have not undergone a major conversion. These vessels will be exempt from the requirements of this subpart until one year after the effective date of the final rule.

The ATA, in conjunction with 46 U.S.C. 4502(e) of the Act, provides discretion to the Coast Guard in determining which standards in 46 U.S.C. 4502(c) should be applicable to fish tender vessels engaged in the Aleutian trade. The intent of the ATA is to improve the safety of fish tender vessels in the Aleutian trade, but still allow continued cargo service to outlying places in Alaska. Therefore, the Coast Guard has determined that all fish tender vessels engaged in the Aleutian trade should comply with this subpart in its entirety.

"Aleutian trade" is contingent upon the existence of weekly common carrier service by water. If there is no such service, service provided by fish tender vessels exclusively is not considered Aleutian trade service. Therefore, a fish tender vessel that is currently serving a place in Alaska west of 152 West longitude and east of 172 East longitude where weekly common carrier service does not exist is not in the "Aleutian trade". However, it should be noted that if weekly common carrier service by water is established to such a place, then a fish tender vessel providing this service would be in the "Aleutian trade" and must comply with this section or discontinue its service to that place.

The proposal to make subpart D applicable to the Aleutian trade may have significant impact on the safety of these vessels. They may also impose a significant cost for existing vessels depending upon whether the vessel continues in the Aleutian trade or discontinues service to places which have weekly common carrier service by water. The Coast Guard requests specific economic information from owners of vessels which may be affected by these proposed requirements.

Subpart E—Stability

Approximately 70% of deaths involving commercial fishing industry vessels are related to poor or inadequate stability. The Act recognized the hazards of improper design or operation as they relate to stability. It requires stability regulations for commercial fishing industry vessels which are built, or the physical characteristics of which are substantially altered in a manner that affects the fishing vessel's stability, after December 31, 1989.

An examination of search and rescue records and vessel casualty data for 1987 and 1988 reveals that the majority of stability related cases can be attributed to insufficient intact stability in waves, unintentional flooding of the vessel, or operational loading errors. An intact stability and flooding standard would help prevent capsizing or sinking in most of these cases.

Casualty data for the years 1982 to 1987 shows that stability related casualty rates are independent of vessel length or vessel hull material. The data also shows that stability related casualties are independent of the geographic area of operation.

The Coast Guard received approximately 50 comment letters dealing with the stability of commercial fishing industry vessels in response to the NPRM. The majority of them expressed the opinion that the proposed regulations in the NPRM were too stringent for commercial fishing industry vessels less than 79 feet (24 meters) in length. However, it appeared that these opinions dealt primarily with the effect of the proposed requirements on existing designs which undergo a substantial alteration. The Coast Guard's position is that the operational stability of smaller commercial fishing industry vessels is clearly of major concern and must be addressed.

Existing commercial fishing industry vessels were specifically excluded from the Act unless they were substantially altered. Since the majority of commercial fishing industry vessels are less than 79 feet (24 meters) in length, and because of the concern expressed about the appropriateness of the stability regulations proposed in the NPRM for these smaller vessels, the Coast Guard is readdressing operational stability for commercial fishing industry vessels less than 79 feet (24 meters) in length in this SNPRM. The intent of these proposed requirements remains unchanged, to provide the industry with standards to be considered in designing new commercial fishing industry vessels. This should result in new designs and new methods of operation. These new methods of operation should increase the attention paid to stability in all loading conditions and should help to reduce the rate of casualties attributable to stability-related problems.

Section 28.500 Applicability

This section describes the revised applicability proposed for this subpart.

It has been revised to take into account fish tender vessels engaged in the Aleutian trade, which are less than 500 Gross Tons (GT) and to include vessels less than 79 feet (24 meters) in length. Vessels less than 79 feet (24 meters) in length have been divided into two groups: those greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length and those 50 feet (15.2 meters) in length and less.

The ATA was not addressed in the final rules establishing 46 CFR part 28 published in the Federal Register on August 14, 1991 (FR 40364); however, the preamble to those rules mentioned that the ATA would be addressed in this SNPRM. Under the ATA a fish tender vessel engaged in the Aleutian trade is exempt from consideration as a freight vessel, a seagoing barge, or a seagoing motor vessel under 46 U.S.C. 3301(1), (6), and (7) if it is less than 500 GT, has an inclining test performed by a marine surveyor, and has written stability instructions on board the vessel. The preamble to the final rules recommended the requirements in 46 CFR part 28, subpart E as appropriate standards pending promulgation of regulations which address vessels in the ATA. In this SNPRM, the Coast Guard is proposing these requirements as the appropriate regulations by revising this section to include fish tender vessels engaged in the Aleutian trade.

As previously stated, several comment letters responding to the NPRM suggested that those proposed rules were too stringent for commercial fishing industry vessels less than 79 feet (24 meters) in length. Of particular concern were the proposed requirements dealing with intact righting energy, water on deck, and severe wind and roll. An ad hoc group calling themselves Naval Architects for Fishing Vessel Safety (NAFVS) pointed out that these requirements were developed for vessels greater than 79 feet (24 meters) in length, and that when applying some of these criteria to the vessels less than 79 feet (24 meters) in length, the result was redundancy and not necessarily increased safety. For example, if a small vessel complies with the intact righting energy criteria, it more than likely already complies with the severe wind and roll criteria. Therefore, they argue that it is redundant to require the vessel to comply with both criteria since safety is not enhanced. Additionally, the NAFVS suggested that the intact righting energy criteria only be required for commercial fishing industry vessels greater than 45 feet (13.7 meters) in length, because there is no evidence that these criteria is appropriate for vessels smaller than 45 feet (13.7 meters) in length. The Coast Guard partially agrees with these opinions.

The criteria proposed in the NPRM were developed for vessels greater than 79 feet (24 meters) in length, however, that does not necessarily mean that they are not appropriate for vessels less than 79 feet (24 meters) in length. Other countries such as the United Kingdom (UK) have required vessels as small as 40 feet (12 meters) in length to comply with the same intact righting energy criteria as proposed in the NPRM. The Coast Guard's position on this issue is that there is not enough information available to support or refute an extension of these criteria to all vessels less than 79 feet (24 meters) in length. Therefore, the Coast Guard has decided not to impose the same intact righting energy criteria as proposed in the NPRM. The regulations proposed in this SNPRM reflect the Coast Guard's new position that these regulations should take into account the size of the vessels, their operation, and the expected cause of many of the casualties classified as stability related.

Casualty data reveals that stability related casualties that resulted in loss of life or loss of the vessel, in many instances, resulted from human error. This was particularly true for vessels less than 50 feet (15.2 meters) in length. Human error includes overloading the vessel at sea (i.e. overfilling the fish holds), improper loading of topside weights, or not maintaining the watertight integrity of the vessel at all times. The master or individual in charge of the vessel must be aware of how changing weights affects stability. If they were aware, the incidence of capsizing and sinking would decrease. This approach, of concentrating on the master or the individual in charge of the vessel and how the vessel is operated, will not be economically burdensome and the mandatory measures will not be very intrusive. However, if in due course an improvement in safety does not result, then more stringent requirements will be considered in the future.

Based upon the casualty review previously mentioned and the comment letters, in particular those of the NAFVS, the Coast Guard proposes that vessels less than 79 feet (24 meters) in length be broken down into two groups with varied requirements. A vessel greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length would be required to comply with the requirements of subpart E except §§ 28.565 (water on deck) and 28.575 (severe wind and roll). This will be addressed further in the discussion of those sections. A vessel 50 feet (15.2 meters) in length or less would be excluded from the majority of this subpart, provided it:

1. Has stability instructions developed by a qualified individual which comply with § 28.530;

2. Has a letter of attestation signed by the owner and the master or individual in charge of the vessel which complies with § 28.505; and

3. Complies with the alternative subdivision requirement of § 28.525.

Due to the casualty date available and the argument made by the NAFVS, that the stability requirements are not applicable to all vessels less than 79 feet in length, the Coast Guard is proposing a breakpoint of 50 feet (15.2 meters). While the international community has been using 40 feet (12 meters) as their breakpoint, the Coast Guard's position, which is based on the stability related casualty data available, is that 50 feet (15.2 meters) is the more appropriate breakpoint for the U.S. commercial fishing industry.

Section 28.505 Vessel Owner's Responsibility

This section proposes additional responsibilities for the owner of a vessel subject to this subpart by requiring a letter of attestation. The Coast Guard's position in both the final rules and this SNPRM is not to require third party involvement in stability analysis (i.e. only the owner and the designer). The responsibility for ensuring compliance with the stability requirements is the owner's. To reinforce this and to promote designers, masters or individuals in charge of vessels, working cooperatively with vessel owners, a letter of attestation signed by both the owner and the master or individual in charge of the vessel, is proposed.

The intent of requiring this letter of attestation is twofold. First it would ensure that the stability instructions are accepted by the owner and easily understood by the master or individual in charge of the vessel. Secondly, it would ensure that the stability instructions are familiar to the master or individual in charge of the vessel. Stability instructions, no matter how accurate or appropriate are of no benefit if they are not used properly. This letter of attestation should promote use of the stability guidance provided. The letter of attestation would be maintained by the owner and be made available upon request. It would be required to be updated whenever a change in the vessel's ownership occurs, the master or individual in charge changes, or the

vessel is codified. A sample letter is provided.

It is important to note that the letter of attestation must be signed by both the owner and the master or individual in charge of the vessel. If the owner and the master or individual in charge of the vessel is the same person, the letter must still be signed in both places, because the two parts of the letter state two different things. The Coast Guard's position is that this will help ensure that the owner accepts the guidance provided by the qualified individual as appropriate for the vessel. It will also help ensure that the master or individual in charge of the vessel, the individual who actually uses the guidance, knows the guidance exists and understands the guidance provided and its importance to the safety of the vessel and the individuals on board. The letter of attestation should also promote communication among the qualified individual, the vessel owner, and the master or individual in charge of the vessel. The qualified individual may have the technical training and experience in stability, but the master or individual in charge of the vessel is more familiar with vessel operations. Therefore, in order to come up with appropriate stability instructions, both individuals should provide input.

Section 28.520 Alternative Simplified Stability Test for Small Vessels

This section proposes a simplified stability test to evaluate the intact stability of a commercial fishing industry vessel in lieu of the more complicated stability test and stability calculations in §§ 28.525 through 28.545 and §§ 28.565 through 28.575. This simplified stability test could be used by owners of vessels less than 79 feet (24 meters) in length, if the angle of downflooding exceeds 40 degrees. A vessel which met the proposed requirements for a simplified stability test would be exempt from the subdivision requirements of § 28.580, if compliance with the alternative subdivision requirements in § 28.525 were demonstrated.

As stated in the preamble to the NPRM, the Committee and the Coast Guard District Fishing Vessel Safety Coordinators have stressed the importance of providing a simple method of evaluating stability for small commercial fishing industry vessels. Several comment letters suggested that, for vessels less than 79 feet (24 meters) in length which do not carry deck loads, IMO resolution A.207, the Roll Period Test, is an appropriate simple method of evaluating stability. The comment letters also pointed out that Navigation and Vessel Inspection Circular (NVIC) 3–76, Stability of Fishing Vessels, addresses the use of the roll period test. However, they did not note that NVIC 3–76 did not endorse the use of the roll period test for commercial fishing industry vessels less than 79 feet (24 meters) in length.

In NVIC 5–86, Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels, the Coast Guard declined to endorse the use of this roll period test for four specific reasons. These are:

1. The roll period is only indicative of the fishing vessel's initial upright metacentric height (GM) and not the full range of stability nor the area under the righting arm curve. These and other important stability characteristics such as the maximum righting arm (the angle at which the maximum righting arm occurs) are important factors in stability evaluation.

2. The data used to develop the nomogram shown in IMO Resolution A/ES.IV/168 was taken from European fishing vessels and coastal freighters. The Coast Guard is not convinced that the roll coefficients recommended are appropriate for U.S. fishing vessels considering the variety of fisheries and the diversity of hull forms and arrangements.

3. A roll test may not be used by the operator to evaluate the fishing vessel's stability while underway by operators who do not fully understand the limitations of measuring the roll period to evaluate stability. Measuring the roll period in still water is a case of free oscillation where the measured roll period is the fishing vessel's natural roll period. This may or may not be the case when the fishing vessel rolls in a seaway. If waves of a constant period act upon the fishing vessel for a significantly long period of time, the measured roll period will be that of the waves. If waves of a constant period are not experienced, the measured roll period may be the natural roll period of the fishing vessel, or, more likely, a combination of the fishing vessel's natural period of roll and the period of the seaway. This combination puts additional forces on the vessel and could provide the master or individual in charge of the vessel with inaccurate information which could lead to severe problems.

4. Finally, the Coast Guard is concerned that the roll coefficients do not accurately account for the changes in the roll gyradius as the fishing vessel operates between full load and burned out (10% capacity of consumables, i.e., fuel and water tanks) conditions. A significant change in the roll gyradius means that the actual GM may be much different than that indicated from measuring the roll period and calculating the GM based in the equations given. While this test could be done at different loading conditions, this would make the test very time consuming. Additionally, the results may not be accurate enough to determine the true stability of the vessel which may lead to a false sense of security on the pat of the master or individual in charge of the vessel.

Since 1975, the UK has required a modified version of this roll period test, on a pass/fail basis, as an alternative to the IMO Intact Stability criteria. While the UK endorses this type of test, it requires that the test be repeated every four years on those commercial fishing industry vessels that have passed a previous roll period test. Additionally, the UK has come to appreciate the limitations of the roll period test in that it only measures the initial GM, in calm water, and then only in a full load departure condition which may or may not be the worse operating condition.

Based on the experiences of the UK and the reasons listed above, the Coast Guard has decided not to adopt the roll period test as an alternative method of evaluating a commercial fishing industry vessel's stability. However, the Coast Guard is still interested in providing a simple method of evaluating the stability of a vessel and invites interested parties to submit comments on this subject.

Several comment letters expressed the opinion that a downflooding angle greater than 40 degrees in all load conditions was very difficult to determine from mere observation, and therefore, would require an extensive amount of calculations. This in turn would defeat the whole purpose of using the simplified test. They suggested that a simple way to determine the downflooding angle be developed. Additionally, they expressed the opinion that while this simplified stability test was adequate for passenger vessels, it was inappropriate for commercial fishing industry vessels because they tend to operate with far less freeboard than passenger vessels. The Coast Guard disagrees with the argument that this test is not appropriate for commercial fishing industry vessels. While the simplified stability test was developed for passenger vessels, the Coast Guard's position is that it is an adequate alternative for commercial fishing industry vessels. It may be of limited use for existing commercial fishing industry vessels, however, this test along with the stability regulations

in general, is intended to promote new fishing vessel designs with larger freeboards.

Several comment letters expressed the opinion that this section be reserved for future study. The Coast Guard disagrees. The Coast Guard's position is that this simplified stability test is a satisfactory alternative. However, the Coast Guard is always interested in suggestions to improve safety. Interested parties are invited to continue to conduct research and attempt to develop other methods to simplify stability evaluations.

The Coast Guard is actively pursuing the development and use of advanced methods for evaluating small vessel stability, particularly for commercial fishing industry vessels. Advanced criteria which are based on dynamic motions in extreme seas (a non-linear boundary condition problem) able to predict a level of protection against capsizing given a particular hull form and sea state condition would be very useful. The research being conducted throughout the U.S. and in other countries is still mainly in the theoretical stage. However, a greater level of effort and coordination is being provided by the Coast Guard, which in time, will lead to practical solutions. The Coast Guard's position is that with the growth of computer technology and the need to develop a criteria usable by the majority of naval architects and fishing vessel designers, alternative approaches to evaluating the stability of commercial fishing industry vessels will be available in the future.

Section 28.525 Alternative Subdivision

This section proposes regulations pertaining to alternate subdivision requirements on vessels less than 79 feet (24 meters) in length. This section, when used in conjunction with the simplified stability test for commercial fishing industry vessels less than 79 feet (24 meters) in length in § 28.520, would allow evaluation of the stability of the majority of commercial fishing industry vessels without a stability test and detailed stability calculations.

Thirteen comment letters expressed the opinion that the proposed alternative subdivision for vessels less than 79 feet (24 meters) in length contained in the NPRM was too restrictive and would result in bulkhead spacing of 2–3 feet (0.6–0.9 meters) because of the lower freeboards typical of commercial fishing industry vessels. The comment letters recommended placing watertight bulkheads at each end of the engineroom, the lazarette, and fish holds. The comment letters indicated that this would be more than satisfactory and less restrictive. The Coast Guard agrees and has adopted these recommendations.

The NPRM proposed a bulkhead spacing similar to that on small passenger vessels. This criterion requires bulkheads to be more closely spaced as freeboard (a measure of reserve buoyancy) is reduced. Since the freeboard on commercial fishing industry vessels less than 79 feet (24 meters) in length is typically much smaller than the freeboard on small passenger vessels of similar size, the bulkhead spacing is less. This would not allow sufficient space to install an engine or steering gear, stow fishing gear and related equipment, nor provide for a workable internal arrangement.

Review of casualty data shows that unintentional flooding of commercial fishing industry vessels is a serious problem and many vessel losses and fatalities can be prevented if there are watertight compartments which limit unintentional flooding. Therefore, the Coast Guard proposes requiring watertight bulkheads around the engineroom, the lazarette, the fish holds, and any other space with a non-watertight closure on the main deck. In addition, this section proposes that compliance with §§ 28.250 and 28.255 be required for all vessels. This would ensure that these compartments could be de-watered if they are unintentionally flooded. In line with keeping these spaces watertight, sluice valves would be prohibited from being installed in the watertight bulkheads. A sluice valve is a valve that is attached at the bottom of a bulkhead with no connecting piping and used for allowing liquid to flow from one compartment into an adjoining one. Sluice valves are difficult to maintain watertight over long periods of time and represent a degradation of bulkhead's watertight integrity.

This section also proposes that a statement be included on the stability instructions for operating personnel, stating that the watertight bulkheads will be maintained watertight at all times. This will help operating personnel to understand the importance of maintaining watertight integrity and act as a reminder to ensure the bulkheads are not compromised.

Section 28.565 Water on Deck

This section proposes to revise the applicability of this section to exclude all commercial fishing industry vessels less than 79 feet (24 meters) in length. There were several comment letters submitted in response to the NPRM that suggested that the water on deck requirement was a redundant requirement if a vessel meets the proposed intact stability criteria and has adequate freeing ports. Also, the comment letters suggested that this requirement was not appropriate to vessels less than 79 feet (24 meters) in length and should not be required for these vessels. The Coast Guard agrees and proposes to require compliance with this requirement only for vessels over 79 feet (24 meters) in length.

The adverse effects of water on deck has been a concern to the Coast Guard for some time. Water on deck is a result of decks being swamped from heavy seas and the water not draining quickly enough through the freeing ports in the bulwarks. This can detrimentally affect the stability of a commercial fishing industry vessel by adding to the displacement of the vessel, raising its vertical center of gravity (VCG), creating additional free surface, and increasing the rolling acceleration and the roll angle. As a result, water on deck has been a contributing factor to many capsizings and sinkings on vessels less than 79 feet (24 meters) in length. However, it cannot be determined if it was a major factor in these casualties. Review of the casualty data indicates that in most of the capsizings and sinkings, the vessels were not in compliance with the intact righting energy criteria as recommended in NVIC 5–86 and now being proposed as required criteria in this SNPRM. If these vessels were in compliance with the recommended intact righting energy criteria, the additional water on deck may not have caused the vessels to capsize and sink. Therefore, the Coast Guard's position is that, at this time, requiring the commercial fishing industry vessels less than 79 feet (24 meters) in length to meet both the proposed intact righting energy criteria and the water on deck criteria is unnecessary. Meeting the proposed intact righting energy criteria along with the use of the required stability information developed by the "qualified individual" should be sufficient.

Section 28.570 Intact Righting Energy

Several comment letters suggested that the proposed intact righting energy criteria were too stringent for small commercial fishing industry vessels and therefore, the criteria be reduced. The Coast Guard partially agrees.

The intact righting energy criteria were developed for vessels greater than 79 feet (24 meters) in length. To extend the requirement to comply with the proposed criteria to all vessels less than 79 feet (24 meters) in length would not be in the best interests of the industry,

especially in light of the fact that this industry has been unregulated for so long. The Coast Guard's position is that some of the vessels less than 79 feet (24 meters) in length can be designed to meet this criteria and it would enhance the safety of the vessel.

Countries in the international community, such as the UK, have required vessels down to 40 feet (12 meters) in length to comply with the same criteria as proposed here. In fact, the UK is in the process of extending this criteria to all fishing vessels regardless of size. However, this has not yet taken place and no data is available to evaluate what affect this will have on the safety of these smaller vessels. The Coast Guard's position is that the commercial fishing industry vessels less than 79 feet (24 meters) in length be broken down into two groups, those vessels greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length, and those vessels 50 feet (15.2 meters) in length and less.

The applicability of this section for these two proposed groups of vessels is addressed in § 28.500. No changes to the criteria have been made. Interested parties are invited to continue to conduct research and attempt to develop a better understanding of the relevance of the intact righting energy criteria for these vessels.

Section 28.575 Severe Wind and Roll

This section proposes revised applicability to exclude all commercial fishing industry vessels less than 79 feet (24 meters) in length. Several comment letters suggested that this section was not appropriate for vessels less than 79 feet (24 meters) in length. The comment letters raised the question of whether severe wind and roll has played a major role in the capsizing of vessels less than 79 feet (24 meters) in length. While severe wind and roll may have contributed, they suggest that it was not the major factor. The comment letters suggest that the profile of a commercial fishing industry vessel less than 79 feet (24 meters) in length is so small, that a severe wind would not play a significant factor. The Coast Guard partially agrees.

The Coast Guard's position is that since the Coast Guard is proposing that all commercial fishing industry vessels less than 79 feet (24 meters) in length must meet the intact righting energy criteria and have the stability instructions developed by the "qualified individual", that requiring these vessels to meet the criteria in this section would be unnecessary. Therefore, vessels less than 79 feet (24 meters) in length would not be required to meet the severe wind criteria.

Section 28.600 Stability for Load Line Assignment

This section proposes regulations related to stability requirements for all commercial fishing industry vessels that operate with a Load Line Certificate. In the past, any commercial fishing industry vessel that was required to have a load line had to demonstrate adequate stability. The criteria by which an owner demonstrated adequate stability was developed by various policy decisions. The Coast Guard's position is that such criteria should be the subject of rulemaking to permit comment by the public. Therefore, the Coast Guard proposes that each vessel must conduct a stability test in accordance with § 28.535. Following the stability test, additional stability criteria must be met. Two sets of stability criteria are proposed and either may be applied. In either case, commercial fishing industry vessels will not be required to meet damage stability.

Casualty statistics reviewed by the Coast Guard do not support a requirement for damage stability. The loss of a commercial fishing industry vessel due to collision damage is rare. A majority of the stability related losses have been attributed to a loss of watertight integrity due to inadequate closures or improper maintenance of closures. The Coast Guard's position is that the stability evaluation associated with the assignment of a load line and the annual survey required to maintain a Load Line Certificate, could prevent such casualties.

In addition to the annual survey conducted by the load line assigning authority, stability information would be required for the master or individual in charge of the vessel. Stability information would be required to comply with § 28.530. This section also addresses issuance of Load Line Certificates to vessels not required to obtain such certificates. These vessels would be required to meet the same stability requirements as vessels required to obtain a Load Line Certificate.

This section proposes to extend this alternative to vessels less than 79 feet (24 meters) in length. Currently only vessels 79 feet (24 meters) or more in length are eligible for Load Line Certificates. The Coast Guard's position is that by allowing a commercial fishing industry vessel the option of obtaining and maintaining a load line, the safety of that vessel should be enhanced. It should be noted that vessels less than 79 feet (24 meters) in length are eligible for only limited domestic service Load Line Certificates. The certificates are not recognized under the International Load Line Convention.

The existing load line regulations, 46 CFR subchapter E, were developed for vessels greater than 79 feet (24 meters) in length. The purpose of the load line regulations is to:

1. Establish the load line marks which when placed on the vessel indicate the maximum amidships draft to which the vessel can be lawfully submerged;

2. Set forth the minimum requirements for load line marks, annual surveys relating to the Load Line Certificates, the issuing of the Load Line Certificates, and the carriage of the certificates on board; and

3. Establish the rules and regulations for the enforcement of load line requirements.

Because the load line regulations, 46 CFR subchapter E, were developed for larger vessels, slight modifications to the regulations are being proposed for the vessels less than 79 feet (24 meters) in length. In particular, the proposed modifications deal with the minimum tabular freeboard to be used from Table 42.20–15(b)(1) and calculation of the minimum bow height. Both proposed modifications are tied to using a length of 80 feet (24.3 meters) as the minimum. Table 42.20–15(b)(1) establishes the tabular freeboard. This value is then adjusted depending on various design features which affects stability such as position of deck line, depth, and similar factors. The Coast Guard's position is that any proposal should allow naval architects the same flexibility to take advantage of design features that enhance stability provided for vessels greater than 79 feet (24 meters) in length by the existing load line regulations. However, the Coast Guard also recognizes that smaller vessels are more susceptible to factors which reduce stability, such as the dynamic effects of a seaway and water on deck. The Coast Guard's position is that commercial fishing industry vessels less than 79 feet (24 meters) in length should be required to use a tabular freeboard equal to that of a vessel 80 feet (24.3 meters) in length and then apply all freeboard corrections, deductions, and other calculations using the actual vessel length.

As for the minimum bow height requirement, the Coast Guard noted a similar trend. As the vessel got smaller the minimum bow height did too. The Coast Guard's position is that the minimum bow height for a vessel of 80 feet (24.3 meters) in length, is 51 inches (1.3 meters) and should not be reduced on a vessel less than 79 feet (24 meters) in length. Consequently, the Coast Guard proposes that the minimum bow

height for vessels less than 79 feet (24 meters) in length should be determined assuming the vessel to be 80 feet (24.3 meters) in length.

All other calculations are to be performed using the actual vessel length. This approach will allow commercial fishing industry vessel designers to take advantage of design features which improve stability while ensuring adequate freeboard assignments which will maintain or increase the safety of commercial fishing industry vessels.

These proposed regulations will not affect the current regulatory project dealing with the load line regulations (CGD 86–013). The current project deals only with required load lines and will not address the issue of voluntary load lines.

Subpart F—Fish Processing Vessel and Fish Tender Vessels Engaged in the Aleutian Trade

Section 28.700 Applicability

This section proposes revised applicability of this subpart to include fish tender vessels in the Aleutian trade as required by the ATA. Fish tender vessels engaged in the Aleutian trade are subject to inspection under the provisions of 46 U.S.C. 3301(1), (6), or (7) except those that:

1. Are not more than 500 gross tons;
2. Have an incline test performed by a marine surveyor; and
3. Have written stability instructions posted on board the vessel.

Section 28.720 Survey and Classification

This section proposes to exclude fish tender vessels engaged in the Aleutian trade from being required to be classed. The ATA only required that fish tender vessels engaged in the Aleutian trade be examined once every two years for compliance with the regulations of this subchapter, it did not require the classing of these vessels.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 but is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). A draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). An estimated 90–95 percent of the total number of commercial fishing industry vessels are independently owned. Even investor and company owned fishing vessels are predominantly associated with small businesses. Therefore, virtually the entire industry can be said to be composed of small businesses. Although the cost of the regulations is estimated to be minor when compared to the total annual revenues of the domestic industry of over $2.5 billion, compliance costs fall disproportionately on a number of individual classes of fishing vessels.

The cost of these proposed regulations is estimated to be minor with respect to commercial fishing vessels less than 36 feet (11 meters) in length operating inside the Boundary Lines in cold water. The economic impact of these regulations on commercial fishing industry vessels with less than 4 individuals on board and that operate beyond the Boundary Line may be significant. Examples of vessels that fall into this category are combination vessels, vessels that use a wide variety of gear types such as troll lines, still lines, pot hauling gear, long lines, oyster tongs, and dredges. The economic impact on these vessels will depend upon the safety equipment already on board these vessels.

A documented 36-foot vessel with less than four individuals on board operating beyond the Boundary Line could incur capital costs estimated to be $1,400 and annual costs estimated to be $320. While this may be a significant amount to invest in a fishing vessel worth $10,000 to $20,000, this is substantially less than the $4,500 it would have cost if the current survival craft tables remained unchanged.

Part-time and seasonal operators represent a significant proportion of many fisheries. The cost of complying with the regulations is the same for part-time and seasonal operators as it is for full-time operators. Therefore, these regulations may lead some part-time and seasonal operators to discontinue commercial fishing activities.

Stability is also an area that may adversely impact small fishing vessel owners, which are all believed to qualify as small entities. The cost of stability tests alone can be from $1,000 to $5,000 per fishing vessel. Since most commercial fishing industry vessels are custom built and would be required to have a stability test of some form, the economic burden could be relatively high. However, since the majority of the commercial fishing industry vessels are less than 50 feet (15.2 meters) in length, the capital cost is estimated to be $1,925 per vessel since the Coast Guard is proposing to eliminate stability tests on these vessels. For those vessels greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length, the total capital cost could be from $3,575 to $18,213.

If you feel that your business qualifies as a small entity and would suffer significant, negative, economic impact, please submit a comment explaining why your business qualifies as a small entity and to what degree the proposed regulations would economically affect your business. Cost data submitted will be thoroughly evaluated before publication of the final rule.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This proposal contains collection of information requirements in the following sections: 28.60, 28.275, and 28.505.

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. The following particulars apply:

DOT No: 2115; OMB Control No: XXXX.

Administration: U.S. Coast Guard.

Title: Commercial Fishing Industry Vessel Regulations.

Need for Information: This information collection requirement is needed to (1) ensure that stability calculations are conducted, stability instructions that are understandable and usable are provided, and that the master or individual in charge of the vessel knows about the instructions and attests that they will be used; (2) ensure that the training required by 46 CFR 28.270 is conducted by qualified instructors who use courses that meet the minimum standards as determined by the Coast Guard; (3) provide documentation to the boarding officers that the required training has been conducted by a qualified individual; and (4) provide documentation to the boarding officer that indicates that certain regulations

have been exempted for the boarded vessel.

Frequency: On occasion.

Burden Estimate: 1,989.5 hours annually.

Respondents: 7,555 annually.

Form(s): None.

Average Burden Hours per Respondent: 0.25 hours (15 minutes).

For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20503, (202) 395–7340.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rulemaking establishes additional safety standards for commercial fishing industry vessels. The authority to regulate concerning the safety of commercial fishing vessels in all navigable waters is committed to the Coast Guard by statute. Furthermore, since commercial fishing vessels tend to move from port to port in the national marketplace, safety standards for commercial fishing vessels should be of national scope to avoid unreasonably burdensome variances. Therefore, if this rule becomes final, the Coast Guard intends it to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. These proposed rules are expected to have no significant effect on the environment. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 46 CFR Part 28

Fire prevention, Fishing vessels, Incorporation by reference, Lifesaving equipment, Main and auxiliary machinery, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Seamen, Stability.

In consideration of the foregoing, the Coast Guard proposes to amend chapter I, title 46, Code of Federal Regulations, part 28 as follows:

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 U.S.C. app. 1804; 49 CFR 1.46.

2. Paragraph (b) of § 28.40 is amended by adding in alphabetical order the following entry to read as follows:

§ 28.40 Incorporation by reference.

* * * * *

American Society for Testing and Materials (ASTM) 1916 Race St., Philadelphia, PA 19103.

F–1321–90—Standard Guide for Conducting a Stability Test (Lightweight Survey and Inclining Experiment) to Determine the Light Ship Displacement and Centers of Gravity of a Vessel—28.535.

* * * * *

3. Section 28.50 is amended by adding the following definitions in alphabetical order to read as follows:

§ 28.50 Definition of terms used in this part.

* * * * *

Aleutian trade means the transportation of cargo, including fishery related products, for hire on board a fish tender vessel to or from a place in Alaska west of 153 degrees West longitude and east of 172 degrees East longitude if that place receives weekly common carrier service by water, to or from a place in the United States, except a place in Alaska.

Note: Since a place is in the Aleutian trade only if weekly common carrier service by water to that place exists, changes in weekly common carrier service will affect a place's status with respect to the Aleutian trade.

* * * * *

Coast Guard Boarding Officer means a commissioned, warrant, or petty officer of the Coast Guard having authority to board any vessel under the Act of August 4, 1949, 63 Stat. 502, as amended (14 U.S.C. 89).

* * * * *

District Commander means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within a district.

* * * * *

Especially hazardous condition means a condition which may be life threatening or lead to serious injury if continued.

* * * * *

4. A new § 28.60 is added to read as follows:

§ 28.60 Exemption letter.

(a) *Specific exemption.* A commercial fishing industry vessel may be exempted from certain requirements of this part upon written request if the District Commander determines:

(1) Good cause exists for granting an exemption; and

(2) The safety of the vessel and those on board will not be adversely affected.

(b) When an exemption is granted to a commercial fishing industry vessel by the District Commander, a letter describing the exemption will be issued by the District Commander and must be maintained on board the vessel for the term of the exemption.

(c) *Class exemption.* The District Commander may issue an exemption applicable to a class of vessels for limited time periods. Such an exemption will be in writing and will specify the terms under which the class exemption is granted. These class exemptions must be maintained on board each vessel to which the exemption applies.

5. A new § 28.65 is added to read as follows:

§ 28.65 Termination of unsafe operations.

(a) A Coast Guard Boarding Officer may direct the master or individual in charge of a vessel to immediately take reasonable steps necessary for the safety of individuals on board the vessel if the Boarding Officer observes the vessel being operated in an unsafe manner and determines that an especially hazardous condition exists. This may include directing the master or individual in charge of the vessel to return the vessel to a mooring and remain there until the situation creating the especially hazardous condition is corrected or other specific action is taken.

(b) Especially hazardous conditions include but are not limited to, operation with:

(1) Insufficient lifesaving equipment on board including but not limited to:

(i) An insufficient number of serviceable PFDs or immersion suits on board; and

(ii) An insufficient number of complement of serviceable survival craft for the number of persons on board.

(2) No operable Emergency Position Indicating Radio Beacon, if required, or without operable communication equipment, if required. When both are required, then at least one must be operable.

(3) Insufficient firefighting equipment on board.

(4) Excessive gasoline liquid or vapors in any space.

(5) Instability resulting from overloading or improper loading.

(6) Inoperable bilge system.

(7) Intoxication of the master or individual in charge of the vessel, as defined in 33 CFR 95.020.

(8) A total lack of operable navigation lights during periods of reduced visibility.

(9) Required watertight closures missing or inoperable.

(10) Flooding or uncontrolled leakage in any space.

(11) Failure to have a currently endorsed Load Line Certificate, when required.

(c) A Coast Guard Boarding Officer may direct the individual in charge of a fish processing vessel that does not have on board a Load Line Certificate issued by the American Bureau of Shipping or a similarly qualified organization to return the vessel to a mooring and to remain there until the vessel obtains such a certificate.

6. Section 28.120 is amended by revising paragraph (a), removing paragraph (b), redesignating and republishing paragraphs (c) through (h) as paragraphs (b) through (g) respectively, and revising tables 28.120 (a), (b), and (c) to read as follows:

§ 28.120 Survival craft.

(a) Except as provided in paragraphs (c) through (g) of this section, each vessel must carry the survival craft specified in Table 28.120(a), Table 28.120(b), or Table 28.120(c), as appropriate for the vessel, in an aggregate capacity to accommodate the total number of persons on board.

(b) Except as provided by § 28.305, compliance dates for the requirements for the number and type of survival craft in Tables 28.120(a), 28.120(b), and 28.120(c) are:

(1) For a documented vessel that operates in the North Pacific Area, September 1, 1992;

(2) For a documented vessel that operates in the Great Lakes or in the Atlantic Ocean north and east of a line drawn at a bearing 150° true from Watch Hill Light, Rhode Island, September 1, 1993;

(3) For each other documented vessel, September 1, 1994; and

(4) For each other vessel, September 1, 1995.

(c) Each survival craft installed on board a vessel before September 15, 1991 may continue to be used to meet the requirements of this section provided the survival craft is:

(1) Of the same type as required in Tables 28.120(a), 28.120(b), or 28.120(c), as appropriate for the vessel type; and

(2) Maintained in good and serviceable condition.

(d) Each inflatable liferaft installed on board a vessel before September 15, 1991 may continue to be used to meet the requirements for an approved inflatable liferaft, provided the existing liferaft is maintained in good and serviceable condition as required by Table 28.140, and it is equipped with the equipment pack required by Tables 28.120(a), 28.120(b), or 28.120(c), as appropriate for the vessel type. Where no equipment pack is specified in Tables 28.120(a), 28.120(b), or 28.120(c), a coastal service pack is the minimum required.

(e) An approved lifeboat may be substituted for any survival craft required by this section, provided it is arranged and equipped in accordance with part 94 of this chapter.

(f) The capacity of an auxiliary craft carried on board a vessel which is integral to and necessary for normal fishing operations will satisfy the requirements of this section for survival craft, except for an inflatable liferaft, provided the craft is readily accessible during an emergency and is capable of safely holding all individuals on board the vessel. If the auxiliary craft is equipped with a Coast Guard required capacity plate, the boat must not be loaded so as to exceed the rated capacity.

(g) A vessel less than 36 feet in length which meets the positive flotation provisions of 33 CFR part 183 is exempt from the requirement for survival craft in paragraph (a) of this section for operation on the following waters:

(1) Within 12 miles of the coastline, any waters; and

(2) Rivers.

TABLE 28.120(a).—SURVIVAL CRAFT FOR DOCUMENTED VESSELS

Area	Vessel type	Survival craft required
Beyond 50 miles of coastline	All	Inflatable liferaft with SOLAS A pack.
Between 20–50 miles of coastline, cold waters	All	Inflatable liferaft with SOLAS B pack.
Between 20–50 miles of coastline, warm waters	All	Inflatable liferaft.
Beyond Boundary Line, between 12–20 miles of coastline, cold waters.	All	Inflatable liferaft.
Beyond Boundary Line, within 12 miles of coastline, cold waters	36 feet (11 meters) or more in length	Inflatable buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	Buoyant apparatus.
Beyond Boundary Line, within 20 miles of coastline, warm waters	All	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters.	36 feet (11 meters) or more in length	Inflatable buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	Buoyant apparatus.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.	All	None.
Great Lakes, cold waters	36 feet (11 meters) or more in length	Inflatable buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline, warm waters	All	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, warm waters	All	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

TABLE 28.120(b).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH NOT MORE THAN 16 INDIVIDUALS ON BOARD

Area	Vessel type	Survival craft required
Beyond 20 miles of coastline	All	Inflatable buoyant apparatus.
Beyond Boundary Line, between 12–20 miles of coastline cold waters.	All	Inflatable buoyant apparatus.
Beyond Boundary Line, within 12 miles of coastline, cold waters	36 feet (11 meters) or more in length	Buoyant apparatus

TABLE 28.120(b).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH NOT MORE THAN 16 INDIVIDUALS ON BOARD—Continued

Area	Vessel type	Survival craft required
Do	Less than 36 feet (11 meters) in length	Buoyant apparatus.
Beyond Boundary Line, within 20 miles of coastline, warm waters	All	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold water.	36 feet (11 meters) or more in length	Buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	Buoyant apparatus.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.	All	None.
Great Lakes, cold waters	All	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline warm waters	All	Buoyant apparatus.
Great Lakes, within 3 miles of coastline warm waters	All	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

TABLE 28.120(c).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH MORE THAN 16 INDIVIDUALS ON BOARD

Area	Vessel type	Survival craft required
Beyond 50 miles of Coastline	All	Inflatable liferaft with SOLAS A pack.
Between 20–50 miles of coastline, cold waters	All	Inflatable liferaft with SOLAS B pack.
Between 20–50 miles of coastline, warm waters	All	Inflatable liferaft.
Beyond Boundary Line, between 12–20 miles of coastline, cold waters.	All	Inflatable liferaft.
Beyond Boundary Line, within 12 miles of coastline, cold waters	36 feet (11 meters) or more in length	Inflatable buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	Buoyant apparatus.
Beyond Boundary Line, within 20 miles of coastline, warm waters	All	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters.	36 feet (11 meters) or more in length	Inflatable buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	Buoyant apparatus.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.	All	None.
Great Lakes, cold waters	36 feet (11 meters) or more in length	Inflatable buoyant apparatus.
Do	Less than 36 feet (11 meters) in length	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline, warm waters	All	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, warm waters	All	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

7. The heading of subpart C is revised to read as follows:

Subpart C—Requirements for Documented Vessels That Operate Beyond the Boundary Lines or With More Than 16 Individuals On Board, or for Fish Tender Vessels Engaged in the Aleutian Trade

8. Section 28.200 is revised to read as follows:

§ 28.200 Applicability.

Each documented commercial fishing industry vessel that operates beyond the Boundary Line or that operates with more than 16 individuals on board or is a fish tender vessel engaged in the Aleutian trade, must meet the requirements of this subpart in addition to the requirements of subparts A and B of this part.

9. A new § 28.275 is added to read as follows:

§ 28.275 Acceptance criteria for instructors and course curricula.

(a) Except as provided in paragraph (b) of this section, an individual who is trained in the proper procedures for conducting the drills and performing the instruction required by § 28.270(a) shall submit a written request and the following documentation to the cognizant OCMI:

(1) A valid license for the operation of an inspected vessel of 100 gross tons or more; or

(2) Proof that the individual;

(i) Has at least one year (360 days) of underway, seagoing experience as a seaman on a U.S. documented commercial fishing industry vessel within five years of the written request;

(ii) Has submitted a statement that the individual has never been denied a Coast Guard license or had a license suspended or revoked;

(iii) Has submitted a detailed course summary outlining the curriculum of the contingencies required in § 28.270(a), and the methods of instruction to be utilized; and

(iv) Meets one of the following criteria:

(A) Has been employed for at least one academic year as an instructor of seamanship, survival at sea, or other maritime safety related U.S. Coast Guard approved training course;

(B) Is certified as an instructor by the Coast Guard Auxiliary;

(C) Is certified as an instructor by the American Red Cross, American Heart Association, or the National Association of Underwater Instructors;

(D) Is certified as a firefighter with special training or unique experience in shipboard firefighting; or

(E) Is certified as a police officer with special training or experience in marine law enforcement.

(b) An individual who can not qualify as an instructor under paragraph (a) of this section, may request Coast Guard acceptance based on documentation which establishes, to the cognizant OCMI's satisfaction, that the individual has received recent, specialized, professional training or experience which relates directly to the contingencies listed in § 28.270(a).

(c) Each OCMI shall:

(1) Issue a letter of acceptance to any qualified individual; and

(2) Maintain a list of accepted instructors in their zone.

(d) Letters of acceptance shall be valid for a period of five years.

(e) Coast Guard accepted instructors may issue documents to individuals confirming that they received the required instruction.

10. The heading of subpart D is revised to read as follows:

Subpart D—Additional Requirements for Certain Vessels

11. Section 28.300 is revised to read as follows:

§ 28.300 Applicability and general requirements.

This section, in addition to the requirements of subparts A, B, and C of this part, applies to the following vessels:

(a) Each commercial fishing industry vessel which has its keel laid or is at a similar stage of construction, or which undergoes a major conversion completed, on or after September 15, 1991, and that operates with more than 16 individuals on board.

(b) Each fish tender vessel engaged in the Aleutian trade except for those described in paragraph (c) of this section.

(c) On [*one year after the effective date of the final rule.*], each fish tender vessel engaged in the Aleutian trade that has not undergone a major conversion and:

(1) Was operated in the Aleutian trade before September 8, 1990; or

(2) Was purchased to be used in the Aleutian trade before September 8, 1990, and enters into service in the Aleutian trade before June 1, 1992.

12. Section 28.500 is revised to read as follows:

§ 28.500 Applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, this subpart applies to each commercial fishing industry vessel that is not required to be issued a load line under subchapter E of this chapter and that—

(1) Has its keel laid or is at a similar stage of construction or undergoes a major conversion started on or after September 15, 1991;

(2) Undergoes alterations to the fishing or processing equipment for the purpose of catching, landing, or processing fish in a manner different than has previously been accomplished on the vessel; or

(3) Has been substantially altered on or after September 15, 1991.

(b) A fish tender vessel in the Aleutian trade, must comply with §§ 28.530 and 28.535.

(c) For a vessel less than 50 feet (15.2 meters) in length, compliance with §§ 28.505, 28.525, and 28.530 may be substituted for compliance with the remainder of this subpart.

(d) Prior to a vessel being assigned a Load Line Certificate, compliance with § 28.600 must be demonstrated.

13. Section 28.505 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 28.505 Vessel owner's responsibility.

* * * * *

(c) A letter of attestation must be signed by the owner and the master or individual in charge of the vessel prior to operation of the vessel. The letter of attestation must be maintained by the owner of the vessel and made available upon request. The letter of attestation must indicate at least that:

(1) The stability test and calculations required by this subpart have been performed to the owner's satisfaction by a qualified individual and have been accepted by the owner.

(2) The stability instructions required by § 28.530 have been developed in consultation with and accepted by the owner and that they are in a format that is understandable to the owner and the master or individual in charge of the vessel.

(3) The stability instructions required by § 28.530 will be followed by the master or individual in charge of the vessel.

(d) A sample letter of attestation is provided as follows:

[Sample]

Letter of Attestation

For: F/V _____

(Vessel Name)

O.N. _____

I am the owner of the F/V _____ and I certify that this vessel as currently configured has been inclined (if applicable), has stability instructions for operating personnel that have been developed in consultation with an individual I consider qualified, and the instructions have been discussed with the master or individual in charge of the vessel. The stability instructions are on board the vessel and are in a format that permits the master or individual in charge of the vessel to readily ascertain the stability of the vessel in any loading condition. In making this determination, I have been guided by the recommendations of _____ (my qualified individual), and the stability requirements in 46 CFR part 28 subpart E.

I further certify that I have provided the necessary training to ensure that the master or individual in charge of the vessel has the qualifications to properly use the stability information and that the instructions will be followed. I will not permit any alterations to be made to the F/V _____ which will affect the stability, without first consulting with a qualified individual and recertifying the adequacy of the stability information provided to the master or individual in charge of the vessel.

_____

(Date)

_____

Fishing Vessel's Owner Signature

I am the master or individual in charge of the subject fishing vessel. I have been provided stability instructions by the owner. I understand the instructions and will follow the instructions in their entirety.

_____

(Date)

_____

Master or Individual in Charge of Fishing Vessel Signature

14. Section 28.520 is revised to read as follows:

§ 28.520 Alternate simplified stability test for small vessels.

(a) A vessel greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length which has a downflooding angle of not less than 40 degrees at the deepest operating draft may comply with this section in lieu of the requirements of §§ 28.535 through 28.545 and §§ 28.565 through 28.575.

(b) Each vessel must be in the following condition when the test described in paragraph (c) of this section is performed:

(1) Construction of the vessel must be complete in all respects.

(2) Permanent ballast, if to be installed on the vessel, must be solid and on board in its final position.

(3) Each fuel and water tank must be approximately three-fourths full.

(4) Each fish hold must be approximately three-fourths full of water. If fish or fish products are stowed in a manner that prevents shifting, the fish hold may be fitted with a solid weight equal to that of the water when the fish hold is three-fourths full, arranged in a manner to approximate the same longitudinal and vertical centers of gravity as if water were used.

(5) The weight of personnel, fishing equipment, and the maximum load of fish to be carried on deck must be on board and distributed so as to provide normal operating trim and to simulate the vertical center of gravity causing the least stable condition that is likely to occur in service.

(6) Each non-return closure on a weather deck drain must be kept open during the test.

(c) Each vessel must not exceed the limitation in paragraph (d) of this section, when subject to the following heeling moment:

M=(P)(A)(H), where—
M=wind heel moment, in foot-lbs;
P=wind pressure equal to—
15.0 lbs/square foot (73.0 kilograms/square meter) except for operation on protected waters;
7.5 lbs/square foot (36.6 kilograms/square meter) for operation on protected waters;
A=Area, in square feet (square meters) of the projected lateral surface of the vessel above the waterline; and
H=Height, in feet (meters), of the center of area (A) above the waterline.

(d) A vessel must not exceed the following limits of heel after the heeling moment of paragraph (c) of this section is imposed:

(1) On a flush deck or well deck vessel, no more than one-half of the freeboard measured to the top of the weather deck at the side of the vessel may be immersed, except that on a well deck vessel with scuppers operating on protected waters, the full freeboard may be immersed if the full freeboard is not more than one-fourth of the distance from the waterline to the gunwale.

(2) On an open boat, no more than one-fourth of the freeboard may be immersed.

(3) The angle of heel must not exceed 14 degrees, in any case.

(e) The heel must be measured at—

(1) The point of minimum freeboard; or

(2) At a point three-fourths of the vessels' length from the bow if the point of minimum freeboard is aft of this point.

15. Section 28.525 is revised to read as follows:

§ 28.525 Alternative subdivision.

(a) A vessel 50 feet (15.2 meters) in length or less must comply with this section.

(b) A vessel greater than 50 feet (15.2 meters) in length but less than 79 feet (24 meters) in length may comply with this section in lieu of meeting the requirements of § 28.580.

(c) Watertight bulkheads must be maintained around the engineroom, the lazarette, the fish holds, and each other space with a non-watertight closure on the main deck.

(d) Each vessel regardless of length must comply with §§ 28.250 and 28.255. Sluice valves are prohibited in bulkheads required by paragraph (c) of this section to be watertight.

(e) A statement must be included on the stability instructions required by § 28.530, stating that watertight bulkheads must not be compromised.

16. Section 28.565 is amended by revising paragraph (a) to read as follows:

§ 28.565 Water on deck.

(a) Except for a vessel less than 79 feet (24 meters) in length, each vessel with bulwarks must comply with the requirements of this section.

* * * * *

17. Section 28.575 is amended by revising paragraph (a) to read as follows:

§ 28.575 Severe wind and roll.

(a) Except for a vessel less than 79 feet (24 meters) in length, each vessel must meet paragraphs (f) and (g) of this section when subjected to the gust wind heeling arm and the angle of roll to windward as specified in this section.

* * * * *

18. Section 28.600 is revised to read as follows:

§ 28.600 Stability for load line assignment.

(a) Prior to issuance of a Load Line Certificate in accordance with the provisions of 46 CFR Subchapter E, whether such certificate is required or not, a vessel must comply with—

(1) The requirements of this section; and

(2) The requirements of 46 CFR Subchapter E.

(b) Each vessel must be inclined in accordance with § 28.535, and comply with the requirements of—

(1) Sections 170.170 and 170.173 of part 170 and subparts B and E of part 173, if involved in lifting and towing respectively; or

(2) Sections 28.545, 28.570, 28.575, and subpart E of part 173, if involved in towing.

(c) Except as provided in paragraph (d) of this section, when applying § 28.570 each vessel must have positive righting arms to an angle of heel of at least 60 degrees.

(d) A vessel need not comply with paragraph (c) of this section provided that:

(1) Each hatch in the watertight/weathertight envelope, such as the live tank hatch, is normally kept closed at sea and is only opened intermittently, under the direct control of the master or individual in charge of the vessel; or

Flooding through these hatches does not result in progressive flooding to other below deck spaces on the vessel.

(e) In each case of loading, a space accessed by such a hatch is assumed to be flooded full or flooded to the level having the most detrimental effect on stability, when free surface effects are considered, whichever is the worst case.

(f) Except for a full tank of seawater, permanent ballast must be of the solid, fixed type.

(g) For a vessel less than 79 feet (24 meters) in length, 46 CFR Subchapter E is modified as follows:

(1) The minimum tabular freeboard of 8 inches must be used from Table 42.20-15(b)(1).

(2) The minimum bow height must be calculated as if the vessel is 80 feet (24.3 meters) in length.

(3) All other freeboard corrections, deductions, and other calculations must be based on the actual vessel length.

19. The heading of subpart F is revised to read as follows:

Subpart F—Fish Processing Vessel and Fish Tender Vessels Engaged in the Aleutian Trade

20. Section 28.700 is revised to read as follows:

§ 28.700 Applicability.

Each fish processing vessel or fish tender vessel engaged in the Aleutian trade, which is not subject to inspection under the provisions of another subchapter of this chapter must meet the requirements of this subpart.

21. Section 28.720 is amended by revising paragraph (a) to read as follows:

§ 28.720 Survey and classification.

(a) Except for a fish tender vessel engaged in the Aleutian trade, each vessel which is built after or which undergoes a major conversion completed after July 27, 1990, must be classed by the ABS, or a similarly qualified organization.

* * * * *

Dated: October 19, 1992.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

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Tuesday
October 27, 1992

Part V

Department of Agriculture

Cooperative State Research Service

Special Research Grants; Water Quality Program for Fiscal year 1993, Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants; Water Quality Program for Fiscal Year 1993, Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants, Water Quality Program for fiscal year (FY) 1993.

Authority and Funding

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law No. 89–106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624 (7 U.S.C. 450i). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below. Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support.

A total of approximately $6,000,000 will be available for this program for fiscal year 1993. Funds will be awarded to support research seeking solutions to water quality problems that are within the scope of the Research Problem Areas listed below. Maximum total funding will not exceed $150,000 per proposal for a maximum proposed funding period of three years.

Section 726 of Public Law No. 102–341, "An Act Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1993, and for other purposes," prohibits CSRS from using funds available for fiscal year 1993 to pay indirect costs on research grants awarded competitively that exceed 14 per centum of the total Federal funds provided under each award.

Applicable Regulations

Regulations applicable to this program include the following: (a) The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, as amended (56 FR 58146, November 15, 1991) which set forth procedures to be the followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR 3016; (d) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and (e) New Restrictions on Lobbying, 7 CFR part 3018.

Introduction to Program Description

The scope of research includes developing principles for studying and understanding the processes that underlie soil and/or water quality degradation which results from agricultural practices involving the use of certain pesticides, fertilizers and wastes. The capability to accurately and economically analyze, interpret, and predict occurrence of residual contamination of soils and water must be developed for both croplands and farmsteads. Results should be transferable to different soils, cropping areas, and size scales, and should contribute to the development of a better understanding of sociological and economic implications of contamination or its prevention. Ultimately, effective and economically feasible avoidance and remedial technologies are needed that, when adopted, prevent or correct agriculturally induced soil and water quality problems, thereby resulting in a more sustainable agriculture.

The research emphasis in Fiscal Year 1993 for this solicitation is on water quality problems related to agriculture with emphasis on ground water. Surface water quality problems are eligible, where they are shown in the proposal to address pervasive problems of agriculturally-related contaminants other than soil sediments, unless soil sediments are a primary source of chemical contaminants.

In the water quality program, the term "AGRICULTURE" encompasses the production of food, feed, and fiber crops, trees and livestock, and includes rural residences and rural communities, forests and wooded areas. Proposals on health risk problems are excluded.

Research Problem Areas (RPA) To Be Supported Under This Solicitation in FY 1993:

100. Analytical and Assessment Methods

110. Soil and Water—Innovative new analytical methods for determining the quantity of nutrients, pesticides, or other potential pollutants with potential impacts on water quality.

120. Field Calibration and Validation—Calibration or validation of soil and/or water analytical methods used under field conditions as a basis for recommending such methods for use by consultants or producers.

130. Scale-Up and Extrapolation—Strategies to extrapolate experimental and model data from point or plot measurements to farm, landscape or watershed scale.

140. Risk—Assessing risks to water quality due to application of fertilizers, pesticides, or wastes under various soil and weather conditions.

200. Fate and Transport

210. Mass Balance—Mechanisms involved in fate and transport through mass balance with quality control/quality assurance procedures.

220. Preferential Flow—Role of preferential flow in moving water and solutes through the soil, as quantified through measurements and models.

230. Processes—Physical, chemical, or biological functions and effects that soils, plants, organisms, and climate have in fate and transport of pollutants.

240. Integration of Processes and Scales—Integration of chemical or transport processes at various scales into models or systems, and assessment of the ability of such models or systems to predict fate or transport of pollutants over space and time.

300. Management and Remediation Practices and Systems

310. Nutrients—Management strategies for fertilizers, manures, or other nutrient sources to meet crop production needs while reducing contaminant loads to surface and groundwater.

320. Pest Control—Alternative or improved pest-control strategies to reduce contamination of water resources by pesticides.

330. Water—Irrigation, drainage, runoff control, and other water management practices that reduce chemical contamination of surface and ground water.

340. Waste—Practices for land application of poultry litter, processing wastes, animal wastes, municipal

wastes, or other organic wastes to include timing, rate of application, composting and cultural practices to reduce contaminant loads to surface and ground water.

350. Remediation—Integration of physical, chemical or biological processes into remediation systems for nutrient utilization, inactivation, or transformation of toxic contaminants to non-toxic forms in soils or waters.

400. Sensors, Geographical Information Systems and Landscape/Watershed Scale Models

410. Sensors for Application Technology—Improved sensors and precision application rate technology for delivery of chemicals or water in precise amounts to meet crop production needs.

420. Geographical Information Systems (GIS), Remote Sensing and Models—Methods to detect, monitor, and map water quality parameters, including pollutants, at a scale ranging from fields to watersheds or landscapes.

430. Soil-Specific and Real-Time Management—Systems for detecting variability in soil properties to allow for real-time adjustment of application rates of fertilizers, pesticides, or other inputs in order to improve efficiency and prevent contamination of water supplies.

440. Expert Systems—Systems and decision aids that enable consultants and farmers to select nutrients or pesticides on the basis of soil, crop, cost, risks, potential for contamination of water, and performance characteristics.

500. Social, Economic and Policy Considerations

510. Acceptance, Adoption and Diffusion of New Technology—Incentives and strategies to encourage the acceptance, adoption, and diffusion of new technologies or practices for improved water quality.

520. Social and/or Economic Impact of Alternative Water Quality Enhancement Practices—Economic impact and behavioral changes relative to producers, the community, and the region in the implementation of new and innovative water quality technologies.

530. Regional Impacts of Policy Options—Regional or national impact on water quality and the sustainability of agriculture due to the adoption of alternative water quality policies or regulations.

540. Incorporating Risk into Policy Options—Assessment and incorporation of economic and environmental risk in developing agricultural non-point source pollution control policies.

Program related questions should be directed to any of the following: Dr. Berlie L. Schmidt, Dr. Maurice L. Horton, Dr. Alice J. Jones, Phone No. (202) 401–4504, Fax No. (202) 401–1706.

Review Criteria

Proposals will be evaluated by a peer review group of qualified scientists selected in accord with section 3400.11 of the administrative provisions governing the Special Research Grants Program. The composition of the group will be based upon the Research Problem Areas of the proposals as identified by the applicants. The following selection criteria for proposals will be used in lieu of those which appear in section 3400.15 of the administrative provisions:

Criteria	Maximum score
Overall Scientific and Technical Quality	40
Creative and innovative scientific approach	
Clear, concise, and achievable objectives	
Technical soundness of procedures	
Feasibility of attaining objectives	
Justification, Review of Literature and Current Research	20
Importance of the problem	
Relevance of proposed research to the problem	
Literature focused on specific research approach and objective	
Budget, Resources, and Personnel	20
Necessary facilities, resources, and personnel available	
Budget appropriate for proposed research	
Demonstrated scientific capability of investigators	
Collaboration	10
Evidence of significant contributions by collaborators	
Evidence and justification of multi-disciplinary and/or multi-institutional collaboration	
Application of Research Results	10
Planned application and implementation of research results	
Extension, transferability, and publication of results	
Potential for results to enhance agricultural sustainability	
Total	100

How To Obtain Application Materials

Copies of this solicitation, the Application Kit, and the administrative provisions governing this program, 7 CFR part 3400, may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2200, Telephone: (202) 401–5048.

Investigators should note that a separate but complementary water quality program exists within the CSRS National Research Initiative Competitive Grants Program. For further information on that program, contact the Proposal Services Branch at the address listed above. Proposals should be submitted to the most appropriate program—submission of duplicate proposals or proposals with substantial overlap to both programs is discouraged.

What To Submit

Submit one (1) original and twelve (12) unbound copies securely stapled in upper left corner. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Application for Funding." One copy of this form, preferably the original, must contain ink signatures of the principal investigator(s) and the authorized organizational representative. Form CSRS–661 and other required forms and certifications are contained in the Application Kit. It should be noted that the September 1992 version of the Application Kit must be used, as previous versions are obsolete.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Format for Research Grant Proposals

The administrative provisions governing the Special Research Grants Program, 7 CFR 3400, set forth instructions for the preparation of grant proposals. The following proposal format requirements are in addition to or deviate from those contained in 7 CFR 3400.4(c). In accordance with 7 CFR 3400.4(c), to the extent that any of the following additional requirements are inconsistent or in conflict with the instructions at 7 CFR 3400.4(c), the provisions of this solicitation shall apply.

The sections of the proposal shall be assembled in the following order: (1) Application, (2) Title of Project, (3) Abstract, (4) Key Words, (5)

Justification, (6) Objectives, (7) Procedures, (8) Research Timetable, (9) Literature Review, (10) Current Research, (11) Facilities and Equipment, (12) Collaborative Arrangements, (13) Curriculum Vitae of Investigators, (14) Budget, and (15) Certifications and NEPA statement, as applicable.

Application for Funding. Attach a completed and signed Application for Funding, Form CSRS–661, to the front of the proposal. Be certain to list in Block #8 the number(s) assigned to the Research Problem Area(s) (RPA) listed above that best describe the greatest emphasis of the proposed research, then the second and third greatest emphasis, if applicable (e.g., 210, 220, 320). One RPA is required and a maximum of three is permitted. This will be the basis of grouping proposals and for determining training and experience needed by the peer review panelists who will evaluate each proposal.

Type and Paper Size. Type should be no smaller than 12 characters/inch, single-spaced on one side of 8½" × 11" paper. Total length of the proposal shall not exceed 20 pages, excluding forms (i.e., cover page, budget form, certifications) and the NEPA statement with its supporting documentation. Reduction by photocopying or other means for the purpose of meeting above stated page limits is not permitted. Attachments of appendices are not permitted. Proposals which do not fall within the guidelines of this solicitation will be eliminated from the competition and will be returned to the applicant as stated in Section 3400.14 of the Administrative Provisions Governing the Special Research Grants Programs.

Abstract and Key Words. The body of the proposal should be prefaced by an abstract and key words which are used to classify the proposal.

Abstract. Include factual, concise, and clear statements of proposed research as phrases or sentences. Limit length to 5 lines.

Key Words. Select 2 double words or 4 single words that describe the research emphasis.

Justification. Describe the water quality problems, or potential problems, including: Where they occur; relevance to site-specific, watershed, regional, State, and National size scales. The expected application or use of resulting information should be explained, for example: Value to the economy, methods of chemical analyses, need for specific model, basis of recommendations, understanding of processes, or relevancy to a specific water quality research program.

Multi Institutions/Organizations. Multi-disciplinary and multi-institution collaboration is encouraged and must demonstrate significant contributions to the planning and conduct of the research by the collaborators. Collaborative or cooperative arrangements with other institutions, organizations, or agencies could include the Agricultural Research Service, Soil Conservation Service, Extension Service, U.S. Geological Survey, Environmental Protection Agency, and Economic Research Service through projects, such as Hydrologic Unit Area, Management Systems Evaluation Areas (MSEA), Demonstration Sites, Farmstead Assessment, and Area Studies.

Budget Form CSRS–55. A copy of Form CSRS–55, along with instructions for completing it, is included in the Application Kit. Applicants should note the special instructions shown below when completing Form CSRS–55:

Item D., "Nonexpendable Equipment." Requested items of equipment must be itemized (by description and cost) on a separate sheet of paper attached to Form CSRS–55, or in the body of the proposal. The need for all requested equipment must be fully justified in the proposal.

Item F., "Travel." The type and extent of travel and its relationship to project objectives should be described and justified. It should be noted that the terms and conditions of any grant awarded under this program will require Principal Investigators to participate in at least one annual regional or national research reporting, evaluation, and planning workshop or conference, for the purpose of interstate, interagency, and interdisciplinary coordination in this Federal-State jointly planned water quality program. Funds may be requested under this budget category for these workshop/conference costs.

Item I., "All Other Direct Costs." Subawards are to be shown on each budget sheet of the primary budget. Subawardee budgets should be provided on separate forms in the same detail.

Item K., "Indirect Costs." The recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14% of total Federal funds. This limitation also applies to the recovery of indirect costs under any subawardee or subcontract budget.

Compliance with the National Environmental Policy Act

As outlined in 7 CFR part 3407 (CSRS's implementing regulations of the National Environmental Policy Act of 1969 (NEPA)), environmental data or documentation for the proposed project is to be provided to CSRS in order to assist CSRS in carrying out its responsibilities under NEPA. The applicant should review the following relevant categorical exclusions (taken from 7 CFR 3407.6(a)) and determine whether the proposed project may fall within one or more of the exclusions.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSRS Categorical Exclusions

Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biologic materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity

In order for CSRS to make a determination regarding NEPA, as to

whether any further action is required (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the environmental aspects of the proposed project is necessary; therefore, a separate statement must be included in the proposal indicating the applicant's determination whether or not the project falls within one or more of the categorical exclusions listed above. This statement must include the reasons, with appropriate supporting documentation, as to why the proposed project falls within a particular exclusion or exclusions. If the proposed project falls within one or more of the categorical exclusions, the specific exclusion(s) must be identified. The information submitted in association with NEPA compliance should be identified as "NEPA Considerations" and the narrative statement with supporting documentation should be placed at the back of the proposal.

Most projects will not need further action regarding environmental considerations. However, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project, whether or not it falls under the categorical exclusions, should substantial controversy on environmental grounds exist or where other extraordinary conditions or circumstances are present that may cause such project to have a significant environmental effect.

Where and When To Submit Applications

All copies of a proposal must be mailed in one package. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted.

To be considered for funding during FY 1993, each completed research application must be postmarked by December 21, 1992, if submitted by regular mail, and sent to the following address: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, D.C. 20250–2200, Telephone: (202) 401–5048.

Please note. Hand delivered proposals or those delivered by overnight express service should be brought or sent to: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, 901 D Street SW., Washington, DC 20024. Telephone: (202) 401–5048.

Proposals delivered by hand or by overnight express service must be received in the Proposal Services Branch by close of business on December 21, 1992.

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 21st day of October 1992.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 92–25948 Filed 10–26–92; 8:45 am]

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federal register

Tuesday
October 27, 1992

Part VI

Department of Education

34 CFR Parts 300 and 301

Assistance to States for the Education of Children With Disabilities Program and Preschool Grants for Children With Disabilities; Correction; Final Rule

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 300 and 301

RIN: 1820-AA89

Assistance to States for the Education of Children With Disabilities Program and Preschool Grants for Children With Disabilities

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On September 29, 1992 final regulations with comments invited were published for the Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities at 57 FR 44794–44852. The regulations are corrected as set forth in the **SUPPLEMENTARY INFORMATION.**

EFFECTIVE DATE: The regulations as published on September 29, 1992 and in this correction document take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of the following sections: § 300.110; §§ 300.121–300.123; §§ 300.125–300.134; § 300.136; §§ 300.138–300.141; § 300.144; § 300.146; § 300.148; § 300.149; § 300.152; § 300.153; § 300.180; § 300.192; § 300.220; §§ 300.222–300.227; § 300.231; § 300.235; § 300.238; § 300.240; § 300.280; § 300.281; § 300.284; § 300.341; § 300.343; § 300.345; § 300.346; § 300.349; §§ 300.380–300.383; § 300.402; § 300.482; § 300.483; § 300.505; § 300.510; § 300.512; § 300.532; § 300.533; § 300.543; §§ 300.561–300.563; § 300.565; § 300.569; § 300.571; § 300.572; § 300.574; § 300.575; § 300.589; § 300.600; § 300.653; §§ 300.660–300.662; § 300.750; § 300.751; and § 300.754. These sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Thomas B. Irvin, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3615), Washington, DC 20202–2720. Telephone: (202) 205–8825. Individuals with deafness or hearing impairments may call (202) 205–9090 for TDD services.

SUPPLEMENTARY INFORMATION:

§ 300.17 [Corrected]

1. On page 44804, in the first and second columns, the definition of the term "vocational education," as used in the definition of "special education" (§ 300.17(b)(3)), and Note 2 following § 300.17 were inadvertently changed from the current regulations. The Secretary did not intend to make a change in that definition, and would not do so without further study. These corrections restore the language of the existing regulations to read as follows:

(3) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(16))

Note 1: * * *

Note 2: The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Public Law 94–482. Under that Act, "vocational education" includes industrial arts and consumer and homemaking education programs.

§ 300.18 [Corrected]

2. On page 44804, in the second column, in the definition of "transition services" in § 300.18(b)(2), the phrase "needed activities in the areas of —" was inadvertently added following the word "Include." The Secretary had determined that, except for technical adjustments, these final regulations would incorporate the statutory definition of "transition services." Therefore, § 300.18(b)(2) is corrected to read "Include—".

3. On page 44804, in the third column § 300.111 is corrected to read:

§ 300.111 Content of plan.

Each State plan must contain the provisions required in §§ 300.121–300.154.

4. On page 44825, second column § 300.570 is corrected to read:

§ 300.570 Hearing procedures.

A hearing held under § 300.568 must be conducted according to the procedures under § 99.22 of this title.

5. On pages 44832–44840, in Appendix C to part 300, the IEP requirements in §§ 300.340–300.350 of the regulations were inadvertently omitted. Therefore, appendix C has been corrected to include those requirements (see boxed material). The questions and clarifying information regarding implementation of the IEP requirements are presented in a question and answer format immediately after the particular section of the regulations that is presented. Appendix C, as corrected, reads as follows:

Appendix C to Part 300—Notice of Interpretation

I. Purpose of the IEP
II. IEP Requirements

§ 300.340 Definition

§ 300.341 State educational agency responsibility

1. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

§ 300.342 When individualized education programs must be in effect

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?

4. How much of a delay is permissible between the time an IEP of a child with a disability is finalized and when special education is provided?

5. For a child with a disability receiving special education for the first time, when must an IEP be developed—before placement or after placement?

6. If a child with a disability has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

§ 300.343 Meetings

7. What is the purpose of the 30 day timeline in § 300.343(c)?

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

9. Must IEPs be reviewed or revised at the beginning of each school year?

10. How frequently must IEP meetings be held and how long should they be?

11. Who can initiate IEP meetings?

12. May IEP meetings be tape-recorded?

§ 300.344 Participants in meetings

(Agency representative)

13. Who can serve as the representative of the public agency at an IEP meeting?

14. Who is the representative of the public agency if a child with a disability is served by a public agency other than the SEA or LEA?

(The child's teacher)

15. For a child with a disability being considered for initial placement in special education, which teacher should attend the IEP meeting?

16. If a child with a disability is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

17. If a child with a disability in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

18. If a child's primary disability is a speech impairment, must the child's regular teacher attend the IEP meeting?

19. If a child is enrolled in a special education class because of a primary disability and also receives speech-language pathology services, must both specialists attend the IEP meeting?

(The child, parents, other individuals)

20. When may representatives of teacher organizations attend IEP meetings?

21. When may a child with a disability attend an IEP meeting?

22. Do the parents of a student with a disability retain the right to attend the IEP meeting when the student reaches the age of majority?

23. Must related services personnel attend IEP meetings?

24. Are agencies required to use a case manager in the development of an IEP for a child with a disability?

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

§ 300.345 Parent participation

26. What is the role of the parents at an IEP meeting?

27. What is the role of a surrogate parent at an IEP meeting?

28. Must the public agency let the parents know who will be at the IEP meeting?

29. Are parents required to sign IEPs?

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

31. Do parents have the right to a copy of their child's IEP?

32. Must parents be informed at the IEP meeting of their right to appeal?

33. Does the IEP include ways for parents to check the progress of their children?

34. Must IEPs include specific checkpoint intervals for parents to confer with teachers and to revise or update their children's IEPs?

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

§ 300.346 Content of the individualized education program

(Present levels of educational performance)

36. What should be included in the statement of the child's present levels of educational performance?

(Annual goals and short term instructional objectives)

37. Why are goals and objectives required in the IEP?

38. What are annual goals in an IEP?

39. What are short term instructional objectives in an IEP?

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

41. Should there be a relationship between the goals and objectives in the IEP and those that are in the instructional plans of special education personnel?

42. When must IEP objectives be written—before placement or after placement?

43. Can short term instructional objectives be changed without initiating another IEP meeting?

(Specific special education and related services)

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

46. Must the public agency itself directly provide the services set out in the IEP?

47. Does the IEP include only special education and related services or does it describe the total education of the child?

48. If modifications are necessary for a child with a disability to participate in a regular education program, must they be included in the IEP?

49. When must physical education (PE) be described or referred to in an IEP?

50. If a child with a disability is to receive vocational education, must it be described or referred to in the student's IEP?

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

52. Must an IEP for a child with a disability indicate the extent that the child will be educated in the regular educational program?

(Projected dates/Evaluation)

53. Can the anticipated duration of services be for more than twelve months?

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

(Other IEP content questions)

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

56. Is there a prescribed format or length for an IEP?

57. Is it permissible to consolidate the IEP with the individualized service plan developed under another Federal program?

58. What provisions on confidentiality of information apply to IEPs?

§ 300.348 Private school placements by public agencies

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

§ 300.349 Children with disabilities enrolled in parochial or other private schools

§ 300.350 Individualized education programs—accountability

60. Is the IEP a performance contract?

Authority: Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411–1420), unless otherwise noted.

Individualized Education Programs (IEPs)

Interpretation of Requirements of Part B of the Individuals with Disabilities Education Act

I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and regulations: (1) The IEP meeting(s), where parents and school personnel jointly make decisions about an educational program for a child with a disability, and (2) the IEP document itself, that is, a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning the special education needs of a child with a disability; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a child with a disability to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each child with a disability is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether a child with a disability is actually receiving the FAPE agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

Note: The Act does not require that teachers or other school personnel be held accountable if a child with a disability does not achieve the goals and objectives set forth in the IEP. See § 300.350, Individualized education program—accountability.

II. IEP Requirements

This part (1) repeats the IEP requirements in §§ 300.340–300.350 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

§ 300.340 Definitions.

(a) As used in this part, the term "individualized education program" means a written statement for a child with a disability that is developed and implemented in accordance with §§ 300.341–300.350.

(b) As used in §§ 300.346 and 300.347, "participating agency" means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(a)(20))

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The SEA shall ensure that each public agency develops and implements an IEP for each of its children with disabilities.

(b) *Private schools and facilities.* The SEA shall ensure that an IEP is developed and implemented for each child with a disability who—

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial school or other private school and receives special education or related services from a public agency.

(Authority: 20 U.S.C. 1412(4), (6); 1413(a)(4))

Note: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare) that provide special education to a child with a disability either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a child with a disability, that agency would be responsible for ensuring that an IEP is developed for the child.

1. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See § 300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every child with a disability in the State has FAPE available, regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

Note: Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of children with disabilities, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for students with deafness or students with blindness), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a child with a disability in a school or program operated by another State agency:

a. SEA POLICIES OR INTERAGENCY AGREEMENTS. The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all children with disabilities in the State. This applies to each interagency situation that exists in the State, including any of the following:

(1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see "LEA-Initiated Placements" in paragraph "b", below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

Note: This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and for non-educational purposes.

Frequently, more than one agency is involved in developing or implementing an IEP of a child with a disability (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of FAPE to a child with a disability. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

Note: The SEA must also ensure that any agency involved in the education of a child with a disability is in compliance with the LRE provisions of the Act and regulations, and, specifically, with the requirement that the placement of each child with a disability (1) be determined at least annually, (2) be based on the child's IEP, and (3) be as close as possible to the child's home (§ 300.552(a), Placements.)

b. LEA-INITIATED PLACEMENTS. When an LEA is responsible for the education of a child with a disability, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program.

Note: The IEP must be developed before the child is placed. (See Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies must be involved by the LEA in the development of the IEP. (See response to Question 59, below, regarding participation of a private school representative at the IEP meeting.)

After the child enters the State school, meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or remains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has FAPE available.

§ 300.342 When individualized education programs must be in effect.

(a) At the beginning of each school year, each public agency shall have in effect an IEP for every child with a disability who is receiving special education from that agency.

(b) An IEP must—

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5); Pub. L. 94–142, sec. 8(c) (1975))

Note: Under paragraph (b)(2) of this section, it is expected that the IEP of a child with a disability will be implemented immediately following the meetings under § 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, if appropriate, the child)); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. How much of a delay is permissible between the time an IEP of a child with a disability is finalized and when special education is provided?

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will

be provided by the agency beginning immediately after the IEP is finalized. The Note following § 300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances that require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible following the meeting.

Note: Section 300.346(a)(4) requires that the IEP include the projected dates for initiation of services.

5. For a child with a disability receiving special education for the first time, when must an IEP be developed — before placement or after placement?

An IEP must be in effect before special education and related services are provided to a child. (§ 300.342(b)(1), emphasis added.) The appropriate placement for a given child with a disability cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to first place the child and then develop the IEP. Therefore, the IEP must be developed before placement. The above requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an interim IEP for the child that sets out the specific conditions and timelines for the trial placement. (See paragraph "c", below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

Note: Once the IEP of the child with a disability is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives based on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (See Questions 3743, below, regarding IEP goals and objectives.)

6. If a child with a disability has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

It would not be necessary for the new LEA to conduct an IEP meeting if:

(1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).

Note: The child must be placed in a special education program immediately after the IEP is finalized. (See Question 4, above.)

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (See Question 5, above.)

§ 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with State policy and at the discretion of the LEA, and with the concurrence of the parents, an individualized family service plan described in section 677(d) of the Act for each child with a disability, aged 3 through 5).

(b) [Reserved]

(c) *Timeline.* A meeting to develop an IEP for a child must be held within 30 calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to review each child's IEP periodically and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

Note: The date on which agencies must have IEPs in effect is specified in § 300.342 (the beginning of each school year). However, except for new children with disabilities (i.e., those evaluated and determined to need special education and related services for the first time), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency. In order to have IEPs in effect at the beginning of the school year, agencies could hold meetings either at the end of the preceding school year or during the summer prior to the next school year. Meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review and, if appropriate, revise each child's IEP. The timing of those meetings could be on the anniversary date of the child's last IEP meeting, but this is left to the discretion of the agency.

7. What is the purpose of the 30 day timeline in § 300.343(c)?

The 30 day timeline in § 300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child has a disability, the public agency has up to 30 days to hold an IEP meeting.

Note: See Questions 4 and 5, above, regarding finalization of IEP and placement of the child.

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

Paragraph (e) of § 300.532 (Evaluation procedures) provides that the evaluation of each child with a disability must be "made by a multidisciplinary team or group of persons * * *". The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting.

Note: When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.

Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency must include the parents as participants at the meeting. (See § 300.345 for requirements on parent participation.)

Note: If, at a separate eligibility meeting, a decision is made that a child is not eligible for special education, the parents should be notified about the decision.

9. Must IEPs be reviewed or revised at the beginning of each school year?

No. The basic requirement in the regulations is that IEPs must be in effect at the beginning of each school year. Meetings must be conducted at least once each year to review and, if necessary, revise the IEP of each child with a disability. However, the meetings may be held anytime during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. How frequently must IEP meetings be held and how long should they be?

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428–29 (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. Who can initiate IEP meetings?

IEP meetings are initiated and conducted at the discretion of the public agency. However, if the parents of a child with a disability

believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting.

Note: Under § 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

12. May IEP meetings be tape-recorded?

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an education record, within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and Part B (34 CFR §§ 300.560–300.575).

§ 300.344 Participants in meetings.

(a) *General.* The public agency shall ensure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to § 300.345.

(4) The child, if appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a child with a disability who has been evaluated for the first time, the public agency shall ensure—

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(c) *Transition services participants.* (1) If a purpose of the meeting is the consideration of transition services for a student, the public agency shall invite—

(i) The student; and

(ii) A representative of any other agency that is likely to be responsible for providing or paying for transition services.

(2) If the student does not attend, the public agency shall take other steps to ensure that the student's preferences and interests are considered; and

(3) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(Authority: 20 U.S.C. 1401 (a)(19), (a)(20); 1412(2)(B), (4), (6); 1414(a)(5))

Note 1: In deciding which teacher will participate in meetings on a child's IEP, the agency may wish to consider the following possibilities:

(a) For a child with a disability who is receiving special education, the teacher could be the child's special education teacher. If the child's disability is a speech impairment, the teacher could be the speech-language pathologist.

(b) For a child with a disability who is being considered for placement in special education, the teacher could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

For a child whose primary disability is a speech or language impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

Note 2: Under paragraph (c), the public agency is required to invite each student to participate in his or her IEP meeting, if a purpose of the meeting is the consideration of transition services for the student. For all students who are 16 years of age or older, one of the purposes of the annual meeting will always be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 16, if transition services are initially discussed at a meeting that does not include the student, the public agency is responsible for ensuring that, before a decision about transition services for the student is made, a subsequent IEP meeting is conducted for that purpose, and the student is invited to the meeting.

13. Who can serve as the representative of the public agency at an IEP meeting?

The representative of the public agency could be any member of the school staff, other than the child's teacher, who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities. (Section 602(a)(20) of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a child with a disability who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

Note: IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

14. Who is the representative of the public agency if a child with a disability is served by a public agency other than the SEA or LEA?

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following: (1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

Note: In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.

15. For a child with a disability being considered for initial placement in special education, which teacher should attend the IEP meeting?

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

Note: Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. If a child with a disability is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, as necessary, to consult with and be a resource to the child's regular teacher.

17. If a child with a disability in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

No. Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

b. While large meetings are generally inappropriate, there may be specific circumstances where the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. If a child's primary disability is a speech impairment, must the child's regular teacher attend the IEP meeting?

No. A speech-language pathologist would usually serve as the child's teacher for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. If a child is enrolled in a special education class because of a primary disability, and also receives speech-language pathology services, must both specialists attend the IEP meeting?

No. It is not required that both attend. The special education teacher would attend the meeting as the child's teacher. The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. When may representatives of teacher organizations attend IEP meetings?

Under the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g) and implementing regulations (34 CFR part 99) and the confidentiality requirements of Part B, officials of teacher organizations may not attend IEP meetings if personally identifiable information from the student's education records is discussed—except with the prior written consent of the parents. (See 34 CFR 99.30(a) and 300.571(a)(1).)

In addition, Part B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. When may a child with a disability attend an IEP meeting?

Generally, a child with a disability should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting—as part of the notice of meeting required under § 300.345(b)—that they may invite their child to participate.

Note: The parents and agency should encourage older children with disabilities (particularly those at the secondary school level) to participate in their IEP meetings.

22. Do the parents of a student with a disability retain the right to attend the IEP meeting when the student reaches the age of majority?

The Act is silent concerning any modification of the rights of the parents of a student with a disability when the student reaches the age of majority.

23. Must related services personnel attend IEP meetings?

No. It is not required that they attend. However, if a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

Note: This written recommendation could be a part of the evaluation report.

24. Are agencies required to use a case manager in the development of the IEP of a child with a disability?

No. However, some agencies have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all children with disabilities served by the agency. Examples of the kinds of activities that case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

No specific person must represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary disability is a speech impairment, there may be no other evaluation personnel involved. The note following § 300.532 (Evaluation procedures) states:

Children who have a speech impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each child with a speech impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments, and (2) if necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b)(1) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting and who will be in attendance;

(2) If a purpose of the meeting is the consideration of transition services for a student, the notice must also—

(i) Indicate this purpose;

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to ensure that the parent

understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the IEP.

(Authority: 20 U.S.C. 1401(a)(20); 1412 (2)(B), (4), (6); 1414(a)(5))

Note: The notice in paragraph (a) of this section could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c) of this section, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

26. What is the role of the parents at an IEP meeting? The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child.

Note: In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

27. What is the role of a surrogate parent at an IEP meeting?

A surrogate parent is a person appointed to represent the interests of a child with a disability in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under Part B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See § 300.514, Surrogate parents.)

28. Must the public agency let the parents know who will be at the IEP meeting?

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance*." (§ 300.345(b), emphasis added.) If possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (See Question 21, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. Are parents required to sign IEPs? Parent signatures are not required by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

The following are some of the ways that IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting.

Note: This is useful for monitoring and compliance purposes.

If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approved the child's special education program.

Note: If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. See Question 11, above.

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

Note: Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child (§ 300.504(b)(1)(ii)) only if the IEP includes a statement on initial placement that meets the definition of consent in § 300.500:

Consent means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought * * *

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary * * * and may be revoked at any time.

31. Do parents have the right to a copy of their child's IEP?

Yes. Section 300.345(f) states that the public agency shall give the parent, on request, a copy of the IEP. In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself within a reasonable time following the meeting.

32. Must parents be informed at the IEP meeting of their right to appeal?

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (§§ 300.504–300.505), it would not be necessary for the agency to do so again at the IEP meeting.

Section 300.504(a) of the regulations states that "written notice that meets the requirements under § 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child."

Section 300.505(a) states that the notice must include "(1) A full explanation of all of the procedural safeguards available to the parents under § 300.500, §§ 300.502–300.515, and §§ 300.562–300.569."

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences through the due process procedures under the Act.

Note: Section 300.506(a) states that "a parent or public educational agency may initiate a hearing on any matters described in § 300.504(a) (1) and (2)."

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See § 300.506, Impartial due process hearing.)

33. Does the IEP include ways for parents to check the progress of their children?

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding the special education program of a child with a disability. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, in checking on a child's progress in the special education program. (See Questions 37–43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. Must IEPs include specific checkpoint intervals for parents to confer with teachers and to revise or update their children's IEPs?

No. The IEP of a child with a disability is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school personnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following:

(1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (§ 300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in

school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies if there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas where there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps:

(1) Remind the parents that they may resolve their differences through the due process procedures under Part B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) that both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise. (See § 300.513, Child's status during proceedings.) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A child with a disability is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

Note: If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service would continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

§ 300.346 Content of individualized education program.

(a) *General.* The IEP for each child must include—

(1) A statement of the child's present levels of educational performance;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;

(4) The projected dates for initiation of services and the anticipated duration of the services; and

(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(b) *Transition services.* (1) The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in § 300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

(2) If the IEP team determines that services are not needed in one or more of the areas specified in § 300.18(b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination was made.

(Authority: 20 U.S.C. 1401(a)(19), (a)(20); 1412(2)(B), (4), (6); 1414(a)(5))

Note 1: The legislative history of the transition services provisions of the Act suggests that the statement of needed transition services referred to in paragraph (b) of this section should include a commitment by any participating agency to meet any financial responsibility it may have in the provision of transition services. See House Report No. 101-544, p. 11 (1990).

Note 2: With respect to the provisions of paragraph (b) of this section, it is generally expected that the statement of needed transition services will include the areas listed in § 300.18(b)(2)(i) through (b)(2)(iii). If the IEP team determines that services are not needed in one of those areas, the public agency must implement the requirements in paragraph (b)(2) of this section. Since it is a part of the IEP, the IEP team must reconsider its determination at least annually.

Note 3: Section 602(a)(20) of the Act provides that IEPs must include a statement of needed transition services for students beginning no later than age 16, but permits transition services to students below age 16 (i.e., "* * * and, when determined appropriate for the individual, beginning at age 14 or younger."). Although the statute does not mandate transition services for all students beginning at age 14 or younger, the provision of these services could have a significantly positive effect on the employment and independent living outcomes for many of these students in the future, especially for students who are likely to drop out before age 16. With respect to the provision of transition services to students below age 16, the Report of the House Committee on Education and Labor on Pub. L. 101-476 includes the following statement:

> Although this language leaves the final determination of when to initiate transition services for students under age 16 to the IEP process, it nevertheless makes clear that Congress expects consideration to be given to the need for transition services for some students by age 14 or younger. The Committee encourages that approach because of their concern that age 16 may be too late for many students, particularly those at risk of dropping out of school and those with the most severe disabilities. Even for those students who stay in school until age 18, many will need more than two years of transitional services. Students with disabilities are now dropping out of school before age 16, feeling that the education system has little to offer them. Initiating services at a younger age will be critical. (House Report No. 101-544, 10 (1990).)

36. What should be included in the statement of the child's present levels of educational performance?

The statement of present levels of educational performance will be different for each child with a disability. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points that should be taken into account in writing this part of the IEP:

a. The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

Note: Labels such as mental retardation or deafness may not be used as a substitute for the description of present levels of educational performance.

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, if appropriate. However, the scores should be (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the disability on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

37. Why are goals and objectives required in the IEP?

The statutory requirements for including annual goals and short term instructional objectives (Section 602(a)(20)(B)), and for having at least an annual review of the IEP of a child with a disability (Section 614(a)(5)) provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP are not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. What are annual goals in an IEP?

The annual goals in the IEP are statements that describe what a child with a disability can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. What are short term instructional objectives in an IEP?

Short term instructional objectives (also called IEP objectives) are measurable, intermediate steps between the present levels of educational performance of a child with a disability and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent that the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

IEP goals and objectives are concerned primarily with meeting the needs of a child with a disability for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's disability that interfere with learning and educational performance in school. For example, if a child with a learning disability is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a child with severe mental retardation would be more comprehensive and cover more of the child's school program than if the child has only a mild disability.

41. Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?

Yes. There should be a direct relationship between the IEP goals and objectives for a given child with a disability and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the IEP, and (2) serves as the basis for developing a detailed instructional plan for the child.

Note: See Question 56, below, regarding the length of IEPs.

42. When must IEP objectives be written—before placement or after placement?

IEP objectives must be written before placement. Once a child with a disability is placed in a special education program, the teacher might develop lesson plans or more detailed objectives based on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. Can short term instructional objectives be changed without initiating another IEP meeting?

No. Section 300.343(a) provides that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and *revising* the IEP of a child with a disability" (emphasis added). Since a change in short term instructional objectives constitutes a revision of the child's IEP, the agency must (1) notify the parents of the proposed change (see § 300.504(a)(1)), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (see § 300.345(c)).

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

Each public agency must provide FAPE to all children with disabilities under its jurisdiction. Therefore, the IEP for a child with a disability must include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

Yes. The IEP of each child with a disability must include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act.

46. Must the public agency itself directly provide the services set out in the IEP?

The public agency responsible for the education of a child with a disability could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see § 300.301(a)). However, the services must be at no cost to the parents, and responsibility for ensuring that the IEP services are provided remains with the public agency.

47. Does the IEP include only special education and related services or does it describe the total education of the child?

The IEP is required to include only those matters concerning the provision of special education and related services and the extent that the child can participate in regular education programs. (Note: The regulations

define special education as specially designed instruction to meet the unique needs of a child with a disability, and related services as those services that are necessary to assist the child to benefit from special education.) (See §§ 300.17 and 300.16, respectively.)

For some children with disabilities, the IEP will only address a very limited part of their education (e.g., for a child with a speech impairment, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those with profound mental retardation), the IEP might cover their total education. An IEP for a child with a physical disability with no mental or emotional disability might consist only of specially designed physical education. However, if the child also has a mental or emotional disability, the IEP might cover most of the child's education.

Note: The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. If modifications are necessary for a child with a disability to participate in a regular education program, must they be included in the IEP?

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a child with a hearing impairment, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. When must physical education (PE) be described or referred to in the IEP?

Section 300.307(a) provides that physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE. The following paragraphs (1) set out some of the different PE program arrangements for students with disabilities, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP:

a. Regular PE with nondisabled students. If a student with a disability can participate fully in the regular PE program without any special modifications to compensate for the student's disability, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. Specially designed PE. If a student with a disability needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. PE in separate facilities. If a student with a disability is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for students with deafness), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph "b", above.)

50. If a student with a disability is to receive vocational education, must it be described or referred to in the student's IEP?

The answer depends on the kind of vocational education program to be provided. If a student with a disability is able to participate in the regular vocational education program without any modifications to compensate for the student's disability, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

Note: The parents should be notified whenever this occurs.

52. Must the IEP of a child with a disability indicate the extent that the child will be educated in the regular educational program?

Yes. Section 300.346(a)(3) provides that the IEP for each child with a disability must include a "statement of * * * the extent that the child will be able to participate in regular educational programs." One way of meeting this requirement is to indicate the percent of time the child will be spending in the regular education program with nondisabled students. Another way is to list the specific regular education classes the child will be attending.

Note: If a child with a severe disability, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any non-curricular activities in which the child will be participating with nondisabled students (e.g., lunch, assembly periods, club activities, and other special events).

53. Can the anticipated duration of services be for more than twelve months?

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term instructional objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term instructional objectives.

Note: In many instances, these components are incorporated directly into the objectives.

Other Questions About the Content of an IEP

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(a)(20) of the Act defines the IEP as a written statement developed in any meeting with the agency representative, the teacher, the parent, and, if appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Public Law 94-142 makes it clear that parents must be given the opportunity to be active participants in all

major decisions affecting the education of their children with disabilities. (See, e.g., S. Rep. No. 168, 94th Cong. 1st Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong. 1st Sess. 47–50 (1975).)

56. Is there a prescribed format or length for an IEP?

No. The format and length of an IEP are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form.

57. Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?

Yes. In instances where a child with a disability must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document only if: (1) It contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans that might be consolidated with the IEP are: (1) The Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)), and (4) the Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. What provisions on confidentiality of information apply to IEPs?

IEPs are subject to the confidentiality provisions of both (1) Part B (Section 617(c) of the Act; §§ 300.560–300.576 of the regulations), and (2) the Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. 1232g) and implementing regulations in 34 CFR Part 99. An IEP is an education record as that term is used in the FERPA and implementing regulations (34 CFR § 99.3) and is, therefore, subject to the same protections as other education records relating to the student.

Note: Under § 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents if "(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests * * *" in that information.

§ 300.348 Private school placements by public agencies.

(a) *Developing individualized education programs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with § 300.343.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) [Reserved]

(b) *Reviewing and revising individualized education programs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative:

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1413(a)(4)(B))

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or school personnel. If both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency must ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

§ 300.349 Children with disabilities in parochial or other private schools.

If a child with a disability is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall—

(a) Initiate and conduct meetings to develop, review, and revise an IEP for the child, in accordance with § 300.343; and

(b) Ensure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§ 300.350 Individualized education program—accountability.

Each public agency must provide special education and related services to a child with a disability in accordance with an IEP. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(Authority: 20 U.S.C. 1412(2)(B); 1414(a)(5), (6); Cong. Rec. at H7152 (daily ed., July 21, 1975))

Note: This section is intended to relieve concerns that the IEP constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the goals and objectives listed in the IEP. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

60. Is the IEP a performance contract?

No. Section 300.350 makes it clear that the IEP is not a performance contract that imposes liability on a teacher or public agency if a child with a disability does not meet the IEP objectives. While the agency must provide special education and related services in accordance with the IEP of each child with a disability, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

Authority: 20 U.S.C. 1411–1420

(Catalog of Federal Domestic Assistance number 84.027, Assistance to States for Education of Children with Disabilities; 84.173 Preschool Grants Program)

Dated: October 21, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

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Part VII

Environmental Protection Agency

Part 372

Thresholds; Toxic Chemical Release Inventory; Community Right-to-Know; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS-400072; FRL-4161-8]

Thresholds; Toxic Chemical Release Inventory; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of petition.

SUMMARY: EPA is providing notice of receipt of a petition to review the threshold structure under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986. The petition, submitted by the Small Business Administration (SBA), requests that EPA change the threshold structure under EPCRA section 313 to exempt facilities with small source releases that meet specified release-based thresholds from the requirement to report releases. EPA is soliciting written comments on this issue.

DATES: Written comments must be received by EPA on or before December 28, 1992.

ADDRESSES: Three copies of comments identified with the document control number (OPPTS-400072) must be submitted to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, Rm. NE-G004, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Tamara McNamara, Economics and Technology Division (TS-779), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 260-5997.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

I. Background

Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023, requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals above threshold amounts to report their environmental releases and transfers of such chemicals annually. Facilities covered are those in Standard Industrial Classification (SIC) codes 20-39 (the manufacturing sector), which exceed an activity threshold for a listed toxic chemical and have 10 or more full-time employees. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act, 42 U.S.C. 13107. Under EPCRA section 313(f)(1), the threshold amounts for reporting are 25,000 pounds per year for manufacturing (includes importing), 25,000 pounds per year for processing, or 10,000 pounds per year for otherwise using a toxic chemical. According to section 313(f)(2), EPA "may establish a threshold amount for a toxic chemical different from the amount established" by section 313(f)(1), provided that such revised thresholds "obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section."

II. Notice of Receipt of Petition

Since the Agency first promulgated the regulations for EPCRA section 313 in 1988, (40 CFR part 372), EPA and the public's knowledge regarding releases of toxic chemicals into the environment has increased greatly. The Agency and the public have gained valuable knowledge regarding the sources and amounts of toxic chemicals released.

The preamble to the EPCRA section 313 final rule states that EPA may consider changing the reporting thresholds based on several years of data collection (February 16, 1988, 53 FR 4508). The purpose of this notice is to announce the Agency's receipt of a petition requesting the review and reevaluation of the current threshold structure under EPCRA section 313. This reevaluation should be based upon information and experience acquired over the past 4 years in dealing with the Toxics Release Inventory (TRI). EPA is soliciting written comments on the issues raised in the petition.

The SBA petitioned the EPA to exclude facilities with "small source releases." The following is the text of the SBA petition, a copy of which is available in the Docket (see the public record section of this notice).

I. Introduction

Section 313 implements the public's "right to know" by providing an emissions inventory from facilities either using more than 10,000 pounds per year or manufacturing (or processing) more than 25,000 pounds per year of any of approximately 300 toxic chemicals or classes of chemicals. Facilities subject to this reporting requirement are required to complete a detailed toxic chemical release form for these specific chemicals. The purpose of this reporting requirement is to inform government officials and the public about releases of toxic chemicals into the environment.

The preamble to the TRI final rule states that EPA may consider changing the reporting thresholds based on several years of data collection.[1] Three years have passed and there are sufficient data which indicate that the thresholds should be changed.[2] In response to these memos, EPA notified SBA that the agency may address the thresholds issue when it proposes to add additional SIC codes to the TRI requirement.[3] EPA does recognize that the purpose of § 313 is to implement the right to know about the release of toxic chemicals into the community. EPA has the authority to alter these reporting thresholds, as long as a "substantial majority of total releases of chemical at all facilities whose compliance subject to the requirements" is reported.[4] The objective of right to know is served by producing data about releases of potential concern to the community.

Currently, EPA implementation of SARA mandates a collection of both significant and insignificant data. It unreasonably includes many small facilities whose compliance with present § 313 regulations is overly burdensome. The TRI data base is not meaningfully improved by countless entries of zero or de minimis release figures, as it now appears with the current Congressionally-specified thresholds. Based on 1988 data, the Office of Advocacy estimated that EPA could generally exclude facilities with releases and transfers of less than 5,000 pounds annually for the vast majority of § 313 chemicals and still satisfy the right to know objectives and the statutory requirements. Our data indicate that approximately 90% of the reports and less than 90% of facilities could be excluded.[5]

Many small facilities which could be exempted lack the time, expertise and money that compliance requires. EPA should employ its authority to eliminate small sources from the application of current reporting and regulatory requirements. This is particularly important now, as the Senate Environment and Public Works Committee considers a vast expansion of the universe of reporting facilities without a significant examination of

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[1] Id.

[2] Memo, "Significance of Small Source Release in Total Releases and Transfers for TRI Chemicals - Preliminary Data Tables - 1988 TRI Data," from Kevin Bromberg, Small Business Administration to Mary Ellen Weber, Environmental Protection Agency, February 28, 1991.

[3] Section 313 now applies only to manufacturing facilities, SIC codes 20-39, with more than 9 employees.

[4] Section 313(g) of the Superfund Amendments and Reauthorization Act of 1986.

[5] Memo, "Significance of Small source Releases in Total Releases and Transfers for TRI Chemicals - Preliminary Data Tables - 1988 TRI Data," from Kevin Bromberg, Small Business Administration, to Mary Ellen Weber, Environmental Protection Agency, February 28, 1991 (enclosed). In this memorandum, we advised EPA to use all available data and examine releases separately from transfers. The suggested 5,000 pound exemption level is only approximate. It is highly dependent on where the level is only approximate. It is highly dependent on where the line is drawn between high release (5,000 pound exemption level) and low release chemicals (10 pound exemption level).

the levels of releases, the most important factor.

II. Failure to Act Will Needlessly Impair the Effectiveness of the § 313 Program

Revising TRI thresholds to eliminate small sources would be more efficient, providing substantial benefits to EPA. At present, § 313 includes facilities with de minimis emissions, which do not present environmental risk. The current scheme depletes scarce EPA financial resources and diminishes EPA's ability to deal with other important environmental issues. An efficient and fair reporting system would result if TRI was revised to cover only the facilities which collectively release a substantial majority of § 313 chemicals (high release quantity chemicals) and could adopt a lower threshold, such as ten pounds, for the remaining chemicals (low release quantity chemicals).[6] Using these two thresholds, TRI will capture 85% or more of the releases, a "substantial majority" under SARA. Such a revision of thresholds would eliminate approximately 90% of the reports and a much lower percentage of facilities.[7]

This modification would not allow effective information collection of a substantial majority of the releases, thus complying with § 313. In addition, this policy would save EPA millions of dollars in administrative costs by avoiding the collection of unneeded data. The General Accounting Office estimated EPA's cost of administering § 313 as $19 million in FYI 1990.[8] If these data were removed from TRI, the EPA would have approximately a 90% reduction in administrative costs, specifically the costly printing, mailing and processing of thousands of forms. The money saved could be used to improve Federal compliance and enforcement as well as state and local participation. This threshold revision would also result in a more accurate data base. Information accuracy should not be subordinate to quantity. An unreliable data base would defeat the purpose of the "Right to Know" legislation. Large facilities, which are better able to compile accurate results and account for more than 85% of the releases, would still be required to report. A reliable data base is important to meet right to know objectives.

III. There is a Critical Need For Immediate EPA Action

Recent congressional and EPA activity, as detailed below, require EPA to expedite achievement of these threshold revisions.

A. Storm water proposals: The proposed general permit for storm water dischargers unreasonably singles out § 313 facilities for special and onerous requirements even though there is no evidence that such facilities are any more likely to have high risk storm water discharges than any other facilities. This rule has the potential to impose costs of more than $10,000 - $100,000 annually per facility on thousands of small businesses, without any positive effects on the environment.[9]

B. Hazardous Pollution Prevention Planning Act of 1991, S. 761: This bill requires all § 313 facilities to implement a Hazardous Pollution Prevention Plan. This plan, at a minimum, will require an extensive analysis of the production process and an examination of economic impacts of chemical use for each § 313 toxic chemical. It also requires the creation of goals for reduction in the use of chemicals, the identification of technologies, procedures, and training programs to achieve these reduction goals, and an implementation schedule. There is no reason to apply these extensive and burdensome requirements to sources which have insignificant releases.

C. Resource Conservation and Recovery Act Amendments of 1991, S. 976: These Amendments require all § 313 facilities to submit a toxics use and source reduction plan. The legislation also requires facilities to write a performance report every two years documenting toxics use and source reduction activities. A facility that fails to implement the plan or achieve its objectives may be required to audit its practices and to modify its plan to implement improved toxics use and source reduction practices. As stated above, a reduction plan does not make sense for facilities with insignificant releases.

D. Water Pollution Prevention and Control Act of 1991, S. 1081: This bill requires § 313 reporters to conduct costly environmental audits by certified auditors. Compliance with the § 313 reporting requirements could result in financial duress for many small facilities.

E. Peak Releases of Toxic Chemicals: Both Congress and EPA are considering a requirement for facilities to report "peak" or short term release figures for the release of toxic chemicals. It is illogical to report short term releases for facilities with de minimis long term releases. De minimis facilities have an annual release figure which is so low that the peak daily release is of no environmental significance.

Current new requirements alone will impose costs of up to tens of thousands of dollars annually on each TRI facility with only minimal environmental benefits. The Federal government and the states will save substantial enforcement and implementation resources by avoiding the imposition of these unnecessary requirements. EPA should use its discretionary authority to exempt small businesses from these inappropriate regulations by revising the § 313 thresholds.

IV. Failure to Revise the Thresholds Inhibits TRI Reporting

The rigid and inappropriate application of TRI and other rules to small business TRI reporters provides a disincentive for small sources to report under § 313. There is a perverse inequity for small businesses that do comply. If a business complies, it will be overburdened by the TRI reporting and other related regulatory burdens. Noncompliers face no such burdens. These increased costs will place the complying facilities at a competitive disadvantage with those businesses which avoid reporting. As you know, it is extremely difficult for EPA and the states to identify noncompliers. In order to eliminate this competitive inequity, the small sources should be eliminated from TRI.

V. Conclusion

The § 313 threshold levels should be immediately revised to exclude small sources and small businesses from unnecessary regulations. Small sources release an insignificant amount of § 313 chemicals and have a minimal environmental impact. EPA should use its discretionary authority to exempt them while still complying with the § 313 statute. Collection of these data needlessly drains the EPA's resources. Millions of dollars annually can be saved for more important EPA functions. The thresholds also should be revised because collection of this data results in an inaccurate data base, which detracts the "Right to Know."

Those smaller sources which do report must bear onerous regulatory costs that do not contribute to environmental quality. Those which do report subject themselves to the further inequity of being at a competitive disadvantage with those which do not report. For these reasons, the § 313 threshold levels should be revised as soon as practical.

III. Request for Public Comment

EPA has identified certain issues associated with this petition for which the Agency is requesting public comment.

A. Statutory Issue

The authority granted the Administrator under section 313(f)(2) may not allow a release-based modification to the threshold structure of the type proposed by SBA. Section 313(f)(1) establishes reporting thresholds based on specified amounts of toxic chemicals manufactured, processed, or otherwise used at a facility. Section 313(f)(2) explicitly states that the Administrator can establish threshold amounts which differ from those established by the statute. Based on this language, section 313(f)(2) could be interpreted as contemplating only revisions to the types of amounts specified in the statute (i.e., manufacturing, processing, or use). In light of the statutory language, EPA requests comment on whether the statute could be interpreted to change the basis of the threshold structure by excluding facilities whose releases fall below a specified threshold.

B. Burden on Small Businesses

The current legislative threshold construct of EPCRA does address the issue of small businesses and small

[6] Id.

[7] Id.

[8] U.S. General Accounting Office, "EPA's Toxic Release Inventory is Useful but Can be Improved", June 1991, GAO/RCED -91-121.

[9] "An Evaluation of the Draft General Stormwater Regulations on Small Organic Chemical Plants," The Advent Group, Inc., June 1991. This report demonstrates that chemical plants face costs exceeding $100,000 annually. Costs at other facilities are expected to be lower but exceeding $10,000 annually.

sources. The 10 full-time employee and activity-based thresholds in section 313(b)(1) exempt a portion of small businesses. EPA estimates that there are approximately 180,000 facilities in SIC codes 20–39. Actual reporting is by approximately 23,000 facilities. Therefore, the current activity thresholds effectively exclude 83 percent of the universe of potential submitters. Such excluded facilities would fall into one of three categories: A non-source (i.e., they do not handle a TRI listed chemical); a below-threshold source that is not a small business; or a below threshold source that is a small business. EPA does not have data on the distribution within these three categories in order to actually quantify how many small businesses are excluded from the reporting requirement by the current thresholds. EPA is requesting comment on the effectiveness of the current threshold structure to limit the burden on small businesses.

Although the SBA petition requests that EPA exempt small sources from release reporting, setting a release-based threshold shifts the focus to the operation of the facility rather than its size. Therefore, any size facility could qualify for the exemption if its releases were under the threshold. This approach neither defines small businesses nor suggests an acceptable level of burden for those small businesses which meet the reporting criteria. EPA's analysis of the 1990 TRI data (Refs. 1, 2, and 3) show that 9,361 facilities submitted all forms with total releases and transfers less than 5,001 pounds. For approximately one-third of these facilities, EPA was able to cross reference the number of employees through the Facility and Compliance Tracking System (FACTS). Using 50 employees as a cut-off point for small businesses, EPA found that approximately one-half of the facilities qualified as "small." A breakdown by SIC code shows that only one industry, SIC major group 29 the food industry, has a much greater than 50 percent number of facilities that reported all releases and transfers under 5,000 pounds. A majority of the industries were closer to a 50/50 split between those facilities reporting all forms under 5,000 pounds and those facilities submitting some reports below 5,000 pounds and some reports above 5,000 pounds. EPA would like comments on the type of criteria that could be considered (e.g., the size of the facility, the volume of the release, a combination of the above, or some other criteria) to address SBA's concerns.

Under SBA's proposal, small businesses that do meet the reporting criteria would still have a reporting burden. Even with a release-based threshold, facilities will still be required to determine if the chemical is covered under TRI, what activities the chemical is involved in at the facility, and calculate how much of the chemical is released before they can conclude they do not have to report. In this instance, the facility would be relieved of the actual filling out of the form and filing it with EPA and the State, but would still have to make the determination that the exclusion is applicable. EPA would like to receive comment on whether small businesses would find it difficult to make this determination and, if so, how the burden could be reduced.

C. Appropriateness of Release Based Thresholds

One of the purposes of EPCRA is to provide citizens with knowledge about chemicals in their communities. EPA would also like to receive comment on whether this type of modification to the threshold structure would limit public access to meaningful chemical release information.

The Agency is aware of other concepts for release-based thresholds. Legislation has been introduced, on both the House and Senate sides, that could expand EPCRA section 313 reporting (e.g., S. 976 (Baucus); H.R. 2880 (Sikorski); S. 2123 (Lautenberg); S. 2360 (Durenberger)). The bills include a release-based structure to supplement, not replace, the activity-based thresholds. In addition to the current manufacture, process, or otherwise use activity levels, releases of 100 pounds for any covered metal or metal category and 2,000 pounds of other covered chemicals in a calendar year would trigger reporting. In taking this approach, the draft legislation proposes an inclusive release-based structure versus the exclusive SBA approach. The approach outlined by SBA in their petition is to exclude reports from facilities not meeting a release threshold for a given chemical. EPA is requesting public comment on the relative merit of release-based thresholds and how they may best be applied for the purposes of TRI reporting.

EPA's analysis of 1990 TRI data (Refs. 1, 2, and 3) shows that approximately 10 percent of all forms submitted have no release or transfer values reported (i.e., the report only has zero releases or not applicable). SBA's proposal would eliminate reports with zero total releases and transfers. EPA requests comments on the effect that eliminating these reports would have on the usefulness of the TRI data. A large percentage of these zero reports were submitted for mineral acids which have been used in high volume but are effectively neutralized prior to release, and transfers of metals or metal compounds which were recycled/reused on-site or off-site. For reporting years 1991 and beyond, due to the elements mandated by the Pollution Prevention Act of 1990 (PPA), the amount of acid treated or metal recycled will appear on the Form R. Also, the amount of metal sent off-site for recycle is now required to be reported. In addition, reports of zero releases may indicate highly efficient processes which are important for pollution prevention purposes. An analysis of the 1990 TRI data (Refs. 1, 2, and 3) shows the following distribution of releases and transfers:

Range (pounds)	Forms
0/NA	8,417
1–10	5,023
11–100	3,968
101–500	3,421
501–1000	6,795
1001–2000	5,262
2001–3000	2,844
3001–4000	2,031
4001–5000	1,590
>5000	35,258
Total 1990 Forms	84,609

Based on this distribution, 49,351 forms were submitted with all releases and transfers below 5,000 pounds. This accounts for about 58 percent of the total number of forms submitted. This number will decrease for reporting years 1991 and beyond because additional off-site transfer amounts, particularly for treatment and recycle, will be reported on Form R.

The PPA requires facilities to submit information on the amount of toxic chemicals entering waste streams. A low or no volume release figure is an "end of pipe" number that may or may not be reflective of amounts entering waste streams. One of the major purposes of the PPA reporting is to identify trends in waste management and the implementation of source reduction. EPA seeks comment on what impact a release-based threshold of the type proposed by SBA would have on meeting the objectives of the PPA.

The Agency is requesting comment on the effect of this type of threshold revision on the enforcement program under EPCRA section 313. A release-based approach would require EPA, the States, or citizens to show that releases

have occurred above and beyond a certain threshold. It is more burdensome to show that a release has occurred than whether an activity threshold has been exceeded. Activity thresholds are not only easier to determine but also may be verified through purchase/inventory records. In addition, EPCRA section 313 only requires facilities to report release estimates based on available data, which may or may not include monitoring data. This could pose potential enforcement problems for facilities who estimate their releases and transfers inaccurately and fail to report because they think they did not exceed the release threshold.

D. Release Volume Issues

EPA requests comments on the threshold levels proposed by SBA, i.e., 5,000 pounds (high release chemicals) or 10 pounds (low release chemicals). SBA suggests that releases below these levels would not pose significant risks. EPA is requesting comment on this issue. In particular, many non-metal compounds on the EPCRA section 313 list are associated with severe chronic effects. There are over 100 chemicals on the EPCRA section 313 list that are known or suspect human carcinogens. Other chemicals listed on the EPCRA section 313 list are associated with non-carcinogenic chronic effects that are induced in humans and/or animals at relatively low dose levels. In addition, others may induce effects at higher dose levels and are known to bioaccumulate. EPA requests comment on the appropriateness of the proposed levels for chemicals such as these, which constitute a majority of the EPCRA section 313 list.

EPA would also like to request comment on how to factor into the threshold determination the effect that aggregate releases from small sources may have on a community when the same chemical is being released from several facilities in the area. This may increase the concentration of the chemical in the community even though individual releases from an individual source may be perceived as "small."

E. Alternatives

EPA requests comment on alternative thresholds or other reporting provisions that would provide the public with information necessary to identify potentially hazardous situations and also provide further potential for burden reduction. For example, SBA's petition may eliminate reports from a facility altogether, which may reduce public awareness of the location and presence of listed toxic chemicals used in significant volumes. An alternative reporting mechanism might be the option to submit a "short form" where releases of a toxic chemical were below a certain level. That is, a facility would have to identify itself as meeting a reporting threshold for a toxic chemical but would not have to report releases and other detailed data unless so required by the Agency. This approach may provide some relief for facilities who must file under EPCRA section 313 and the PPA.

Another alternative, suggested in a letter to EPA from the Small Business Coalition for A Responsible TRI Policy (Ref. 4), is a two-tier exemption scheme. This scheme proposes: (1) Exemption of reports of chemicals for "non-highly toxic" and high release volume chemicals for releases into any environmental media of less than 5,000 pounds per year, and (2) a "short form" TRI report, instead of an exemption, for releases of less than 5,000 pounds per year for "highly toxic" and low release volume chemicals.

EPA is requesting public comment on these issues and the effect that a release-based modification to the threshold structure will have on the community right-to-know.

IV. Public Docket

A public record has been established and is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

V. References

1. USEPA, OPPTS, IMD. Printout from the 1990 TRIS Database: Facilities with all Releases/Transfers <= 5000 pounds. (August 10, 1992): 152 pp.

2. USEPA, OPPTS, IMD. Printout from the 1990 TRIS Database: Chemicals within Release Ranges. (August 7, 1992): 52 pp.

3. USEPA, OPPTS, IMD. Printout from the 1990 TRIS Dababase: Breakdown by SIC Codes. (August 7, 1992): 2 pp.

4. Small Business Coalition for a Responsible Toxic Release Inventory Policy. Letter from K. Bromberg to S. Sasnett, ETD, OPPTS, USEPA, re: Small Business Petition to Modify TRI Threshold Structure. (August 14, 1992): 2 pp.

Dated: October 14, 1992.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

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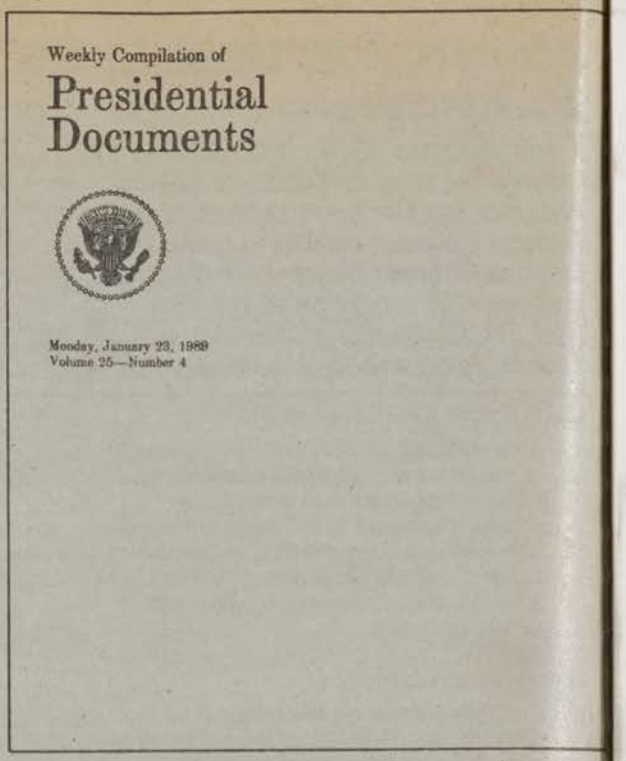

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